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Lord Birkenhead to Address Minneapolis Meeting

LORD BIRKENHEAD, former Lord High Chancellor of England, and one of that country's most prominent jurists and statesmen, has accepted an invitation to address the forthcoming meeting of the Association at Minneapolis as the representative of the English Bar. Lord Birkenhead's well-known reputation gives assurance that his address will be one of the most interesting features of the meeting. This distinguished Englishman has had a truly remarkable career. As Frederick Edward Smith, barrister of Gray's Inn and the Northern Circuit, he achieved distinction in his profession. He entered Parliament from the Walton Division, Liverpool, as a Unionist, in 1906, and his parliamentary career has covered a space of fifteen years. He was knighted and became Solicitor-General in 1915. From 1915 to 1919 he was Attorney-General, and in 1919 he became Lord High Chancellor. During the late war he was for a while on active service in France with the Indian Corps. Further titles followed the conferring of knighthood in 1915. In 1918 he was created Baronet, in 1919 Baron, and Viscount in 1921. On his retirement from the office of Lord High Chancellor he received his present title. Last October he was elected Lord Rector of Glasgow University. His later brilliant success was fully foreshadowed during his university career. He studied at Wadham College, Oxford; was Vinerian Law Scholar, 1895; Fellow and Lecturer Merton College, 1896; Lecturer Oriel College, 1897; Oxford University Extension Lecturer in modern history in 1898; Extension Lecturer in modern history Victoria College, 1899. During an unusually active career he has found time to write extensively on law and other subjects. "International Law in the Far East," a second edition of which was issued in 1908, and "International Law" (Fourth edition, 1911) are among his principal works.

Some Pertinent Correspondence

THE following correspondence between President John W. Davis of the Association and leading representatives of the Bar of Great Britain should prove of interest:

Attorney General
Royal Courts of Justice,
Strand, London.
23rd February, 1923.

Dear Sir:

You may be aware that during last summer when Chief Justice Taft was good enough to pay us a visit in this country, a suggestion was put forward that it might be possible to induce the American Bar Association to hold their annual meeting in London next year. We realize the difficulties which necessarily stand in the way of such a proposal, and that it is asking a great deal of the members of that association to come so far for their meeting; but we feel that it would be a great privilege for the members of the legal profession in this country, and perhaps not without interest to the legal profession of America, if such arrangements could be made and an opportunity given for improving the acquaintance of the members of the profession in the two countries.

We are writing, therefore, on behalf of the Bar and the Law Society of England formally to put the suggestion before your Association, and to express the great pleasure which it would give us all if your Association could see its way to hold its annual meeting in London in 1924.

The legal sittings end here at the end of July, and we would suggest that the middle of July would perhaps be a convenient time to enable us to show your members something of our procedure over here.

We have communicated the fact that we are writing this letter to the Lord Chancellor and the

Lord Chief Justice, and we are authorized by both of them to state that the proposal meets with their cordial approval.

We have the honour to be,

Yours faithfully,

DOUGLAS McGAREL HOGG,
H. M. Attorney General.

T. W. H. INSKIP,
H. M. Solicitor General.

T. R. HUGHES,
Chairman of the Bar Council.

A. COPSON PEAKE,
President of the Law Society.

The Hon. John W. Davis,
Messrs. Stetson Jennings & Russell,
15 Broad St., New York City, U. S. A.

March 13, 1923.

The Rt. Hon. Sir Douglas McGarel Hogg, K.C.,
H. M. Attorney General,
Royal Courts of Justice,
Strand,
London.

Dear Sir:

I have just received the letter which you, together with the Solicitor General, the Chairman of the Bar Council and the President of the Law Society, were good enough to address to me as President of the American Bar Association. I am communicating its contents without delay to the Executive Committee of the Association and will take the greatest pleasure in laying it before the Association as a whole at its next annual meeting, which, unfortunately, does not occur until the 29th day of next August. I am sure, however, that both the Executive Committee and the Association as a whole will share my pleasure at the receipt of this invitation and the evidence which it gives of the community of interest and feeling that exists between the profession in the two countries. I should be happy, therefore, if you would be good enough to communicate to the Solicitor General, the Chairman of the Bar Council, and the President of the Law Society, the thanks of the American Bar Association for this courtesy, and also express to the Lord Chancellor and the Lord Chief Justice our appreciation of their approval.

You will pardon us, I hope, for not making at this time a more definite reply. There are, of course, practical considerations which must be carefully canvassed before a conclusion can be reached. Moreover, under the constitution of our Association, the Executive Committee, which is the governing body *ad interim* is elected from year to year and has power to fix the time and place of the annual meeting only for the year during which it is commissioned. The present committee, therefore, cannot decide the time and place for the year 1924, but must leave this duty to be performed by its successors who will be chosen at the annual meeting next August. The present committee, however, will proceed at once to canvass the practical aspects of the situation and thus endeavor to provide its successors with the material for a decision as soon as possible after they shall have been elected.

In the meantime, I beg you to believe me,

Faithfully yours,
JOHN W. DAVIS.

Attorney General
Royal Courts of Justice, Strand.
27th March, 1923.

Dear Sir:

I am very much obliged to you for your letter of the 13th instant, the contents of which I am communicating to those associated with me in my previous letter. I quite understand the position set out in your letter, and we on this side of the Atlantic can only hope that, with the assistance of the investigation by the present Committee, its successors will see their way to arrive at a favourable decision. Perhaps I may be fortunate enough to have the pleasure of welcoming you and making your personal acquaintance in 1924.

Yours faithfully,
DOUGLAS McGAREL HOGG.

The Hon. John W. Davis,
The American Bar Association,
15 Broad Street,
New York.

In this connection it may be stated that the special committee recently appointed is now investigating the feasibility of accepting the invitation to London by communications to the General Council and the Local Councils of the States. The committee solicits comments from all members addressed to President Davis.

HISTORIC BACKGROUND OF PLAN FOR RESTATEMENT OF THE LAW

Great Works of Clarification and Simplification Accomplished Under Justinian and Napoleon Furnish Interesting Analogies to Task Undertaken by American Law Institute, but Even With All Our Mechanical Advantages the Modern Project Is More Difficult*

By Hon. Herbert S. Hadley
Professor of Law, University of Colorado

I DO not know why I should have been asked to speak upon a strictly historical subject on a dinner occasion unless perhaps the time of the meeting was somewhat cut short; and when our quiet-spoken but highly efficient secretary, William Draper Lewis, to whom, second only to the Chairman of this important occasion, Mr. Root, the profession throughout the country is indebted for the successful progress of this work up to the present time,—when he first asked me to speak upon the subject of the Justinian and the Napoleonic codes as offering interesting analogies to the work we are undertaking to accomplish, I told him that he ought to get somebody who was really a specialist on the subject. He told me I had been asked because they wanted somebody who did not know too much, that he had read Lytton Strachey's work, Eminent Victorians, in which it is asserted that ignorance is the first requisite in the writing of history, and that what they wanted was one who was not unable to see the forest on account of the trees.

Now upon that explanation I weakly yielded to the importunities of our secretary to speak upon this subject, and I want to tell you as briefly and as clearly as I can something of the work that was accomplished in these two great historic codifications of the law, as furnishing possible suggestions and analogies for us in the work we are undertaking to accomplish.

And it is natural that we should turn to the system of jurisprudence of that remarkable race of men who over two thousand years ago extended their civilization, their dominion and their culture over the Mediterranean Basin and Western Europe, in any movement that we should make to improve our own. For there have been in the history of the world but two great civilizations of the same general kind and character, Roman civilization and the European civilization of the present day of which we are a part,—as there have been in the history of the world but two great systems of jurisprudence, the Roman law and the common law of the English-speaking people. And when we consider the achievements of the Romans, either from the standpoint of their civilization or their jurisprudence, we cannot but be filled with reverence for the "great of old, for those dead but sceptered sovereigns who still rule our spirits from their urns."

It has been frequently stated that the American people are not interested in history, and sometimes indeed it does seem that they are fearful of looking backward o'er the page of history lest they should meet with the fate of Lot's wife and be turned into pillars of salt. But I undertake to say that before this audience it is unnecessary to contend that history furnishes the background for all intelligent living, not only of nations but of individuals; and it is in that light and for that purpose that I want to turn your attention to the work that was accomplished along the same line that we are now undertaking to proceed, fifteen hundred years ago.

While it is true that there are marked similarities in the law of all nations which have arrived at something of the same degree of civilization and culture, yet there are two great people who stand out as law makers and law givers and law enforcers of history—the Romans and the English-speaking people. Their systems of jurisprudence were very similar; both of them had a foundation of an unwritten constitution upon which they erected the superstructure of statute and of common law; and though the Roman law developed more through restatement and codification than has the common law, yet both systems were essentially a judge-made system in which the common law was the dominant, the important and the controlling part. Roman law, like the common law of the English-speaking people, began in the intense formalism and technicalities incident to its early period, but as it progressed it went from complexities and artificialities to simplicity, as is the progress of all systems of jurisprudence, except, apparently, the criminal law of the United States.

The various steps by which the Roman law secured its development were works of restatement and codification. The Twelve Tables are usually accepted as the beginning of Roman law and the foundation of it. That was distinctly a work of codification that had behind it a long period of legal development. But the Twelve Tables were not in the nature of a constitution, they were not like the laws of the Medes and Persians, unchanged and unchangeable, but subject to interpretation by the courts, and, being subject to interpretation by the courts that administered them, they were subject to repeal or modification by the courts that interpreted them.

The next step following the adoption of the Twelve Tables which gave coherency and unity and harmony to the Roman law, are what was known as the Edicts of the Praetors,—which were in effect a restatement by the presiding officer of the court every year in which he announced the principles that he would follow in the interpretation of the Twelve Tables, the jurisdiction that he would assume, and the principles of law that would apply in the decisions themselves. And thus the law secured a continued restatement subject to the changing economic and moral conditions of the time; and thus it expressed what law in its

*Address delivered at banquet of Washington meeting to form the American Law Institute the evening of February 23, 1923.

last analysis should always express, the moral judgment of the period to which it applies.

But Roman law during this period did not have what our common law has always had, the direction of scientifically trained lawyers and judges. The Praetors were not lawyers, not necessarily trained in the law. Men who practiced in the courts were not trained lawyers, and nobody participated in the actual decision of cases who was necessarily trained in legal principles. Thus during this period Roman law was like a ship without a rudder or a pilot; it frequently made its port by reason of the judgment and the good sense of those who controlled it, but it did not have a system of navigation which was likely to insure results or which was always sure of bringing the ship to the right harbor.

But in the beginning of the Roman Empire there was introduced a great reform in the Roman law which accomplished three great results which are of consequence to civilization today. By an order of the Emperor Augustus, certain jurisconsults were given the right to officially advise in a decision of cases, and thus for the first time in the development of Roman law there was introduced an officer corresponding in authority and in function to the judges whose decisions have developed the common law of the English-speaking people.

In addition to that, this order giving official authority to the jurisconsults in the decision of cases and in advising the Praetors made the profession of the law a learned profession and brought about the establishment of law schools and the giving of scientific legal instruction.

And so, Mr. Chairman, it seems to me that we might well regard Augustus Caesar as the patron saint of the legal profession in that he introduced into the Roman law the work and the authority of legally trained judges; he made our profession a learned profession and he made it depend upon a system of legal education. With this addition of a scientific legal direction, the Roman law proceeded to develop along scientific lines into the harmonious, the equitable, the effective system which has had such an influence upon all subsequent civilization.

By the early part of the second century it became possible to do away with the yearly edicts which had been issued by the Praetors and the common law of Rome was summed up in a final restatement under the direction of an able lawyer by the name of Salvius Julianus, in the reign of Emperor Hadrian.

In the latter part of the second century there was another marked step along the line of scientific legal development in the commentaries of one whose first name alone has been preserved for us, Gaius, who wrote in the time of the Antonines and who ushered in the classical age of Roman jurisprudence. During the course of the next century he was followed by other able commentators who gave to the Roman law a wealth of interpretation which rounded out the system and which made possible codification and preservation in the code of Justinian. Among the notable commentators of the latter part of the second and the first half of the third centuries were Ulpian, Paulus, Papinian and Modestinus. Papinian was the most distinguished of the lot and he has made the name of a lawyer an honored name in the history of the world. When he was asked by the Emperor Caracalla, who had killed his brother, to write a brief justifying the act, he made the historic reply that it was easier for an emperor to kill his brother than it was for him to justify it, and that he would consider that he was guilty of the offense of murder did he unjustly accuse one who was not guilty.

With this development you can readily understand that the Roman law had by this time assumed a very concrete and definite form. But with the close of the third century the sources of former legislation were abolished and all power and all law-making were given to the emperor. The imperial decrees then became the fountain sources of law and it was the multiplicity and the number of these that finally brought about that work of Justinian which stands as a model of all subsequent efforts along that line.

In the early part of the fourth century the first code was prepared by a lawyer of distinction, Gregorianus, to be followed some fifty years later by another code prepared by Hermogenianus and the definiteness which was thus given to the law by these two codifications was further made effective by a rule of citations adopted by the Emperors Theodosius and Valentinian, making the writings of the five commentators to whom I have referred the quotable authorities in all the courts of the empire. So great was the distinction of Papinian that whatever side he might be on when they were equally divided was considered the decision of the majority.

Following this work of unofficial codification and restatement, Theodosius, in the middle of the fifth century, undertook to accomplish what Justinian accomplished one hundred years later. He stated that the number of law books and of authorities had increased to such a point that they were beyond the power of mortal man to master. And so, with the assistance of a commission he undertook the collection of imperial decrees and also the codification of the unwritten law. In the troubled conditions that then existed in the Roman empire he accomplished only the work of collecting and of abridging the imperial decrees of the emperors, and one hundred years later Justinian undertook and accomplished the work that Theodosius had begun.

I think for the purpose of the work that we are undertaking I will impose upon your patience and good nature to tell just a little in detail as to how the different commissions under Justinian carried out their work. He directed that in the codification of the imperial constitution or decrees of the emperors only these three former codifications should be considered. He appointed a commission of ten men in recognition of the tradition of Roman history that the Twelve Tables had been framed by ten wise men. The chairman of that commission was John, the Exarch, and Tribonian, a most remarkable man, was also a member. They took the three codifications, the Gregorian, the Hermogenian and the Theodosian Codes and in a period of fourteen months they completed the first publication of what is known as the Code Justinian. So encouraged was Justinian by the success of this effort that he extended his activities into the codification or the collection of the common law, and he appointed for this work another commission composed of sixteen men of which, this time, Tribonian was the chairman and of which there were four law professors members. They divided them-

selves into three sections and certain writings were assigned to each of these divisions. There were thirty-nine commentators whose works were considered by the commission. Only one statement was to be taken upon any one subject, and those were to be revised and restated so as to bring the law into harmony with present conditions of life.

After a work of three years, although ten years were allowed to the Commission to accomplish it, this work was completed. Two thousand books were examined amounting to something over three million sentences or periods. They were reduced to fifty books consisting of some one hundred and fifty thousand sentences; and the Roman law, the common law of the Roman Empire, was thus reduced to nine thousand one hundred and twenty-three legal propositions. In the Code of Imperial Decrees the number of existing statutes gathered together was four thousand seven hundred, and so, Mr. Chief Justice, the administration of the law was comparatively a simple process when they only had forty-seven hundred statutes to examine and nine thousand one hundred and twenty-three legal statements gathered from all of the commentators who had written upon the subject of the common law of the empire.

During the progress of this work it had become necessary to issue some fifty Imperial decrees harmonizing conflicts in the unwritten law and also correcting conflicts in the Imperial decrees of the different emperors; and so the reforming of the first Code was again undertaken and again the ubiquitous and resourceful Tribonian was appointed chairman of this Commission. Also during the progress of the work it became evident that some simpler statement of the law was necessary not only as a basic instruction, but for the use of the courts, and another commission consisting of three men, again with Tribonian as chairman, and Theophilus and Dorotheus, two law professors, as his assistants, undertook a revision of the Institutes of Gaius. This work was issued practically coincident with the issuing of the Digest. A year later the revision of the Code was issued and thus in a period of one year the entire scope of Roman law was covered, the entire body of the law was brought into three works, the Code, the Digest and the Institutes. They were published under imperial decree, they became the law of the Empire; it was against the law to quote any previous authority, it was against the law even to comment in any way upon the law as found in those three volumes.

Tribonian is probably the master spirit of this great work of achievement and from what we know of him he must have been a remarkable man. He has been referred to as the Sir Francis Bacon of Roman history. He was an historian, he was an astronomer, he was a mathematician, he was a poet, he was a publicist and he was a courtier. We can judge of his ability in all of these lines by a record that he has left of his achievement in the last mentioned regard. He stated that he had only one concern in reference to the Emperor Justinian and that was that he was so superlatively good and great that he feared that Providence would raise him alive upon high to help rule the universe.

However, as Justinian enjoyed, with the exception of Augustus, the longest reign of any of the Roman emperors, it is evident that God Almighty was not similarly impressed with the necessity of making Justinian his first assistant.

The work of Justinian, notable as it was, seems to have attracted really but little attention at the time. I do not know that it attracted as much notice as the forming of the American Institute of Law. It has very little place in the literature of the period. It was framed in a language that the people to whom it applied did not understand; it was directed by an emperor of Slavic blood; the dominant personality who was responsible for it was a Macedonian. And so, in the Greek city of Constantinople, in the evening of the greatness of the Roman Empire, there was prepared this statement of the Roman Law, which was to have such a great subsequent influence upon the history of the world. In addition to becoming the law of the Empire, it was made the basis of all legal instruction in the schools of law, and the course of instruction was increased from four years to five years. The law schools were limited to those at Constantinople, Rome and Berytus, the law schools in Alexandria and Caesarea and Athens having been suppressed.

H. G. Wells, in his Outline of History, is so indignant over the fact that those schools were suppressed that he neglects to mention the Corpus Juris Civilis of Justinian which, next to the Bible, has had a more profound influence upon the history of the world than any other book. The Roman law as thus preserved in the work of Justinian did not become the law of what we know as the Western Hemisphere, which for one hundred years had been in the possession of barbarian chieftains; and it was not for twenty years afterward that even a formal authority was reestablished by Justinian west of the Adriatic. Even then the Code of Theodosius, modified by barbarian customs and laws, continued largely as the law of Western Europe. It was not until in the revival of learning in the Twelfth Century in the universities of Italy, and particularly of Bologna, that Roman law came into the vast influence that it has been destined to exert. At the University of Bologna in the Thirteenth Century there were as many as ten thousand students studying Roman law, and there were twelve universities throughout Italy teaching it to the students who came there from all sections of the Western World. In the preliminary revival of learning and in the application of Mediaeval standards of civilization and culture as a basis of the reorganization of Western Europe after the dark ages, there was no one influence which was more important, which was more far-reaching in extent, than was the Roman law as it was taught in the universities of Italy and of Western Europe. It became not only the basis of legal learning, but of juristic thought and general culture, and thus it continued down through the Middle Ages.

The work of Justinian was really not a work of codification, it was a work of revision, it was a work of abridgment, it was a work of collection. The Code of Napoleon is more distinctly a work of codification than was the work which it took as its great prototype. Following the revival in the study and the use of the Roman law in the 12th and 13th Centuries, it had generally become the law of Southern France, but in the northern provinces the customs of the various races who lived there generally prevailed even over the Roman law. Then

there were the ordinances of the kings, and then the Canon Law had a great influence as the ecclesiastical courts had a very considerable civil and criminal jurisdiction. It was not, in fact, until the 16th Century that the name of the Corpus Juris Civilis was applied to the great work that was done under Justinian and that was in contradistinction to the Corpus Juris Canonici, which was the law of the Church.

This condition of confusion that existed in the laws of France had long been recognized and Voltaire declared that one in traveling across France had to change his laws as often as he changed his horses. Even as early as the 17th Century Louis XIV had undertaken a work of correction and had done considerable toward the framing of a code of procedure which would bring about some correction of the confusion and the uncertainty of the law. This work was continued by his successors and one of the first declarations by the revolutionary government was in favor of harmonizing the conflicting provisions of French law. The battle cry of the French Revolution, "Liberty, equality and fraternity," was a declaration not only for equality before the law but for equality of the law throughout the entire territory of France. And one of their early acts was to appoint a commission to undertake the codification of the French law. This commission made a report in two years to the National Assembly, but the National Assembly refused to accept it for the reason that it contained no grand and high sounding ideas. And then France temporarily abandoned the work of codification. Surrounded by monarchial foes she had to devote herself to a struggle for existence. But after she had triumphed over her enemies and had risen superior to her difficulties,—as I hope and believe she will again triumph over the indifference of Allies and the trickery and opposition of enemies and rise superior to her difficulties,—she turned again to the work of reforming her system of jurisprudence.

In 1799, when the first Consulate was established, provision was also made for the work of codification, and this time there were appointed to carry on this work of restatement and codification, some judges. The first work under Justinian had been done entirely by lawyers and teachers of law, but four judges of the courts of appeal were appointed under the first Consulate to prepare a code, and the work progressed very much along the same lines that it would naturally take in official action of the present day. The first draft was submitted to all the other superior judges of the Republic, and after their criticism a new draft was prepared which was submitted for consideration to the Council of State, and after discussion a third draft was prepared and that was submitted, in turn, to the vote of the National Assembly. It was rejected not because it had no high-sounding ideas, but because there was too much in it for them to digest. So it was withdrawn by the Government and then it was introduced piece-meal, a subject at a time, and in that way it secured a final enactment.

It was not complete, however, for the reason that there had to be four ancillary codes, a code of commercial law, a criminal code, a code of criminal procedure, and a code of civil procedure. This completed the work of codification of the French law. It was first called the code of the French people, but three years later, when Napoleon became Emperor, he changed its name to the Code of Napoleon, by which it is generally known in history. But his contributions to the accomplishment of this work have, in the estimate of careful historians, been regarded as comparatively small. He presided over most of the meetings of the Council of State, but at those meetings he made irrelevant and rambling discourses, although he is credited with having made some forceful observations upon the subject of marriage and divorce.

The great character, the great personality of the codification known as the Code of Napoleon was Cambacérès, just as Tribonian was the dominating personality in the Code of Justinian. Through the Code of Napoleon, the Code of Justinian has established the legal principles of practically all of the nations of Western Europe. The Code of Napoleon has found adoption in Belgium, in the Netherlands, in Switzerland, in Italy, and codes following closely upon it were adopted in the German provinces, in Roumania and Greece. The principles of the Roman law became the law, not only of Western Europe, but of Russia, they were adopted by the Empire of Japan, Mexico, Central and South America, they furnished the basis of such codification as has been adopted in China, they, to a large extent, furnished the basis of the laws of Islam. And the principles of the Roman Law have been made the basis of international law, they have given to the English law its admiralty law, the law of domestic relations, its law merchant, its equity system and the idea of corporate existence. In fact, there is scarcely a single department of our far-reaching system, with the exception of the law of real property, that does not owe its debt of gratitude to the men who developed and established the Roman law.

We turn to this great work of codification under Justinian not so much as a great juristic achievement struck off at a given time from the brain and purposes of men, but as a means by which there were preserved for posterity the masterpieces of Roman jurisprudence; and its value to the world can be measured by its value to the civilizations that it has helped to establish, to nurture and to maintain.

There are many interesting analogies, Mr. Toastmaster, if I have not trespassed already longer than I should upon your time and patience, to be drawn between these two great historic accomplishments in the restatement and clarification of this great system of jurisprudence and the work that confronts us here in America today. Their work, of course, was vastly simpler even in an age that had not yet accomplished the mechanical achievement of the printing press,—it was vastly simpler than that which confronts us. Even with all our advantages of the printing press and other mechanical devices we have a much greater problem than was accomplished under Justinian or was accomplished by the people of France. And yet, as Mr. Root has said, if we do not strive to do something, we will be lost in "the wilderness of single instances," in the jungle of conflicting and confusing decisions. We may not accomplish all, but if we do not strive we will not accomplish anything.

At this time there is to my mind something more that we can gather from these historical an-

alogies. We can not only gather an inspiration and direction as to the methods by which we shall carry on our work, but we can find an emphasis of the value and importance to civilization of a scientific, harmonious system of law. At a time when domestic safety and international peace are in a condition of disorganization as the result of the awful destruction of the world war, the idea and the principles of law are more important than they have ever been before. We saw how, after the darkness and the chaos of the Middle Ages, Europe turned to the principles of the Roman law as a basis upon which to rebuild the structure of civilization. Today, when the European civilization is still struggling for its very existence and the future is still dark and uncertain, we can look to the principles of law as the best hope of the world, if we will apply between nations those principles of law which we apply effectually between men. And we can hardly overestimate the importance and value to the world today of a harmonious, definite and certain system of jurisprudence.

Let us strive, Mr. Chairman, to give to posterity as great a gift as the past has given to us.

EDITOR'S NOTE: The selection of Ex-Gov. Hadley to speak on this extremely pertinent subject was assuredly based on quite other grounds than those he humorously sets forth in the beginning of his address. Chief Justice Taft, who presided at the banquet of the American Law Institute, in introducing him, referred to the speaker's interest in the great achievements in the field of Roman law. In spite of the burden and necessity incident to his position as a professor, the Chief Justice said, Governor Hadley had "found time enough to look into a better system of law, and both as a jurist and historian he found time enough to prepare for publication and to publish a most delightful history which vindicates Augustus as one of the greatest law-givers and organizers of peaceful government that the world ever saw. And he creates I think a more reliable sense of proportion between Augustus and his uncle Julius. If you have not read that book, I commend it to you. It is with great pleasure that I ask Governor Hadley to say something to us on the Roman law." And at the conclusion of the address, the Chief Justice added: "I am sure we are all greatly indebted to Governor Hadley for his remarkable summary of the history of Roman law and the Code of Napoleon. Nothing could be more appropriate for this occasion, than a description of the building up and restatement of that law."

CURRENT LEGISLATION

Legislation Through Compacts Between States With Consent of Congress Apt to Be More Satisfactory Than Reciprocal Statutes Where Issue Is Important and Involves Mutual Sacrifices

By J. P. CHAMBERLAIN

THE statesmen who drew the Constitution realized that in our system of a national sovereignty with limited power, but extending over the whole country, and state sovereignties having wide power but limited jurisdiction, some way must be found to settle questions involving the interests of two states or of a group of states but which were, nevertheless, rather local than national in their scope. They, therefore, authorized a middle system between the national government on one side, and the local state governments on the other by permitting compacts or agreements between the states with the consent of Congress. (Constitution, Article 1, Section 10, (3).) Sometimes this type of difficulty can be settled by reciprocal legislation, one state passing an act to take effect upon the passage of a similar act by another (Reciprocal Legislation, by Samuel McCune Lindsay, *Political Science Quarterly*, Vol. XXV, No. 3), but frequently it is necessary that there be a definite agreement between the various states involved and, furthermore, where the question at issue is of great importance and involves sacrifice of interests on both sides, satisfactory legislation is much more apt to result if a group of persons representing the states settle the issues by conference and produces an agreement containing identical statutes to be proposed to each legislature. Furthermore, reciprocal legislation is at the mercy of subsequent legislation, while compacts can be so drawn as to create rights which can only be altered by common consent.

An important field for the application of this middle system is the treatment of water rights on non-navigable streams in the irrigated region of the west, particularly in the Rocky Mountain and Great Basin country. Many of the streams whose waters are necessary to fertilize the rich lands on their banks, cross and recross state lines, so that not only the interests of individuals, but the interests of states, are involved in the question of rights in their waters. Many of these states have discarded the common law doctrine of riparian rights as unfitted to their conditions and have in place of it substituted the principle of appropriation for beneficial use and even in states like Montana and California where the riparian theory is still applied, the appropriation of waters is also legal. The ownership of running water is declared to be in the people of the state and permits for use are granted by a public authority on proof that the water is to be used for beneficial purpose. The permit only continues in force so long as the water is put to use. Very large amounts of money are involved in the construction of irrigation works and the homes and property of many thousands of persons depend on the validity of the water rights which alone gives value to their lands. New projects cannot be started, new lands bought, unless a dependable water right is obtained. Consequently, as the settlement in these states increased and it became evident that the amount of available water was less than the amount of thirsty land, the question of determining the rights of rival appropriators in different states was brought to the attention of the courts.

Basing his argument on the commerce clause of the Constitution and upon the necessity that there be

single management of these rivers, which was not possible so long as legislative control was divided between the states, and which must, therefore, be in the Congress, the Solicitor General of the United States, in 1906, argued that Congress had the power to prescribe the laws which would regulate the use of water in interstate streams. This theory has had its defenders in the literature on the subject. (Irrigation Water Rights, by Ralph H. Hess, 51 American Law Review, page 45.) The Supreme Court, however, in the case in which the argument was made, Kansas v. Colorado, 206 U. S. 46, flatly decided that "each state has full jurisdiction over the lands within its borders, including the beds of streams and other waters"—page 93. The possibility of regulation through Act of Congress being thus discarded, the court met the need that the rights of the lower state be protected against action by the upper in taking the entire flow, by holding that it would do justice between the states by limiting the upper state to its reasonable share. As interpreted in the latest announcement of the Supreme Court, it was decided that "the upper state on such a stream (interstate) does not have such ownership or control of the waters flowing therein as entitled her to divert and use them regardless of and in prejudice to the rights on the lower stream." (See Wyoming v. Colorado, (1922) 66 L. Ed. 660, at p. 665.) It was also conversely held that the lower riparian state could not be allowed the old right of a riparian, to have water come down to its borders undiminished in quantity, but that it, too, must be satisfied with its fair proportion of the common property.

Recognizing that the question was novel and that there was no supreme legislative authority, the Justice writing the opinion in Kansas v. Colorado, 51 L. Ed. 956, remarked that "through these successive disputes and decisions, this court is practically building up what may not improperly be called interstate common law," (page 975). The rule of common law so established has been recently declared by the Supreme Court as follows: "in different states, recognizing the doctrine of appropriation, the question whether rights under such appropriation should be judged by rule of priority has been considered by several courts, state and federal, and has been uniformly answered in the affirmative," (Wyoming v. Colorado, 66 L. Ed. 667, and cases there cited.) As a consequence, the prior appropriator in one state could count on protection of his rights by the judges against subsequent diversion by appropriators in a state higher up on the stream. (Bean v. Morris, 221 U. S. 485.) A modification of the rule was necessary when the stream crossed boundaries of states, one of which applied the riparian theory, the other that of appropriation. As the riparian owner is entitled to the flow of the stream as it was accustomed to flow, for use on his riparian land, an appropriation above his land was an infringement of his right, and an injunction could be granted if the case arose within the state. On interstate water courses he could get no such protection. The federal court would apportion the water between the states, practically on a basis of beneficial user, and leave it to state law to regulate individual rights in the state's share. (Kansas v. Colorado, supra; Rickey Land and Cattle Co. v. Miller & Lux, 218 U. S. 258.)

It was not enough, however, that an appropriator could be protected by the courts in these acquired rights; means must be also provided to enable new enterprises to be started, new acres brought under the plow. In many states it was necessary that the intending appropriator should secure a permit from the proper state authority before he could begin his diversion works. It has been recognized in these states that a record of all appropriation permits granted and in force, must be kept to enable the administrative authority to authorize the diversion of more water without interfering with established rights. Once he has such a permit, however, the new appropriator can go forward with confidence and the owners of old rights will not be forced to be constantly on their guard against possible encroachments on their supply. There is substituted an administrative process for the expensive, inadequate method of allowing any one to make a claim and try to enforce it by suit or at least to compel a compromise with earlier appropriators and so get some water. If, however, two separate, independent governments were granting permits on the same stream, conflicts would arise and no reliance could be put in the action of either authority. Furthermore, it not unfrequently happens that water can best be diverted in one state for use on lands in another. Then the appropriator must secure his permit from the authorities in the state of diversion on certificates of beneficial user from those in the state where the water was to be applied to the land.

The courts could not deal with this phase of the regulation of interstate streams, the legislative and administrative officials have had to be called in. Not only must the water courses be treated as a unit for judicial purposes, they must be as nearly as possible treated as a unit for administrative purposes. Both by reciprocal laws and by compacts have the most interested states sought to secure a degree of unity in administration compatible with state sovereignty.

The State of Idaho, Compiled Statutes 5595, Laws of 1915, Chapter 111, authorized the grant of a permit to appropriate and take water in Idaho for use in Oregon if the application had previously been approved by the proper Oregon authorities, subject to reciprocity from Oregon. (See Oregon, 1911, Chapter 244.) The permit, however, was only to be granted if the interests of the State of Idaho would not be materially injured.

In the legislative year of 1921, the States of Colorado, Chap. 244, and New Mexico, Chap. 147, created joint commissions to make agreements for the division of waters on specified streams, the agreements to be effective when approved by Congress and the state legislatures. The legislature of Utah, by Chapter 70, authorized the State Engineer to grant applications to take water from interstate streams in Utah for beneficial use in a border state and to issue a certificate of appropriation on satisfactory evidence that the waters have been put to that beneficial use. He was also authorized to co-operate with the state engineer of any border state in the regulation and control of water and water rights on interstate streams. For that purpose he could enter into agreements with such state engineers if the agreements were not in conflict with the existing water law. Wyoming by Chapter 47, authorizes a similar co-operation between its water authorities and those of Utah.

The contrary particularistic spirit is evidenced by Chapter 220 of the Laws of Montana of 1921, prohibiting the appropriation and diversion of water within the state for use outside its boundaries except "pursuant to a petition to and an act of the legislative assembly" of the state and makes a prohibited diversion unlawful. In many states a similar statute is in effect. Against the contention that these statutes are unconstitutional

as prohibiting interstate commerce in water, the New Jersey act was upheld in the case of McCarter v. The Water Co., 209 U. S. 349. Vol. 10 of the English and American Annotated Cases, p. 116, contains the decision of the New Jersey court, Vol. 14 of the same series, p. 560, the decision of the United States Supreme Court, with notes.

To deal with a water system on a continental scale was created the commission to determine rights on the Colorado River. The commission consisted of members from seven riparian states and the United States and was authorized to draw up an agreement to be proposed to Congress and the several states as a contract. (Wyoming 120, Arizona 46, California 88, Colorado 246, Nevada 115, New Mexico 121, Utah 68, U. S. Public 56, 67th Congress.) Involved here was not alone the diversion of the natural flow of the river, but the construction of great control dams in the upper states whose benefits would very largely, if not principally, accrue to the lower states. Again, it was important that these dams be so constructed as to lessen the risk of flood in California and Arizona, in the lower Colorado Valley. Furthermore, the river is not only interstate, but international, and while no legal rights in international rivers flowing from the United States into Mexico have been acknowledged by this country, it has shown its desire for fair dealing by agreeing give to Mexico a specified amount of water from the Rio Grande development on the American side, and an equal spirit of fair play in the future might require a grant from the Colorado.

The commissioners have agreed upon a compact to be submitted to the legislatures. The compact divides the water between the group of states in the upper part of the river and the states of Arizona, California and Nevada on the lower river and requires co-operation between the water officers of each state. The states agree that "if, as a matter of international comity," the United States should recognize that Mexico has rights to the use of the water, they will share equally in supplying the amount allowed. The compact protects all the present perfected rights to the beneficial use of the water, but for the future requires the limitation of user in each group of states to the amount of water apportioned to the group. In the event of a controversy between the states over the river the Governors agree to appoint commissioners to consider and adjust the controversy "subject to ratification by the legislatures of the states so affected." The compact can only be terminated by the unanimous agreement of the signatory states and in that determination all rights established under it must continue unimpaired. It is interesting to note that the use of the river for navigation is declared to be subservient to its use for domestic, agricultural, and power purposes, and that use for power is subservient to use for agricultural and domestic purposes. By the building of the Laguna Dam above Yuma, between California and Arizona, the small amount of navigation on the river was practically stopped, so that it is not likely that any objection will be made by Congress on this score. (Report of State Engineer of Wyoming, 1921-22, p. 35.)

This compact, if adopted by the states, is the most imposing use of the power to make agreements with the approval of Congress which has yet been carried out. While it will have to be supplemented by such agreements as those in the statutes of Wyoming and Utah (cited) in order to cover the situation thoroughly, it is an interesting example of a way in which states may themselves settle interstate problems and so avoid the necessity of asking for legislation by Congress of a more or less doubtful constitutionality. The joint interest in interstate waters is not confined to the western states and a bill has recently passed the legislature in New York to create a commission from the states of New York, Pennsylvania and New Jersey, to study water resources on the Delaware River and to report a treaty to the Legislature. Power developments on non-navigable interstate streams and protection of such streams from pollution, offer a field for such treaties. (8 Harvard Law Review 138, 38 Am. Law Review 321.) Of another type is the compact between the States of Washington and Oregon to regulate fishing and protect fish in the boundary waters of the Columbia River and other rivers. Section 20, Chapter 128 of the Oregon Laws of 1918 and Section 116, Chapter 31 of the Laws of Washington for 1915, approved by Congress, page 515, Volume 40, Statutes at Large. This agreement provides that changes in the laws affecting fisheries in the Columbia River over which the two states have concurrent jurisdiction shall only be made by mutual consent and approbation. An interesting problem of enforcement would be presented to the Supreme Court if one state actually did pass an amending act without the other's consent.

The harbor of America's greatest city is the subject of an agreement between the states of New Jersey and New York creating the Port of New York District. The district contains territory in the states of New York and New Jersey and a joint agency called the Port of New York Authority is created for administrative purposes. Each state appoints three members and the six together constitute a body both corporate and politic with extensive powers to operate terminal transportation facilities and borrow money. (See Laws of New York, 1921, Chapter 154, and 151 of the Laws of 1921 of New Jersey.) In the Session of 1922 the two states, New York by Chapter 43, New Jersey by Chapter 9, agreed upon a co-operative plan for the development of the port and directed the Port Authority to carry it out. The bonds issued by the authority are to be free of taxation by either state. Thus the development of the greatest port in America is to be directed by a single authority, and is not to be left to the City of New York and the various municipalities on the Jersey Shore with divided and often discordant interests. This compact is expressly subject to repeal by either state, but after the Port Authority has been in operation for some years, and especially after property is acquired and bonds issued, a dissolution will be difficult.

Former President Honored

Hon. Walter G. Smith, of Philadelphia, also a former president of the American Bar Association, was recently honored by the award of the 1923 Laetare Medal of Notre Dame University. This medal is annually awarded to a Roman Catholic layman, who has distinguished himself in the service of the nation and the church. Mr. Smith was a member of President Harding's Advisory Committee at the Conference on the Limitation of Armaments in Washington, and was recently made a member of the Board of Indian Commissioners. He has also served as President of the Federation of Roman Catholic Societies of Pennsylvania.

TRADE REGULATION

A Department Devoted to a Review of Recent Federal Trade Commission Rulings and of Court Decisions Relating to Unfair Competitive Practices

By HERMAN OLIPHANT

THE United States Circuit Court of Appeals for the Second Circuit has recently rendered a unanimous decision in the case of the *Mennen Company v. Federal Trade Commission*, which is sure to have far-reaching consequences in the field of the law of trade regulation, whether that decision be affirmed or reversed by the United States Supreme Court, before which, it is understood, there will be an effort to get it by a writ of *certiorari*.

The Court reversed an order of the Commission which had commanded the Mennen Company to cease from its practice of allowing a discount in price on toilet articles to firms which it classified as "jobbers" and "wholesalers," while refusing this discount to firms which it classified as "retailers," it having included in the class "retailers" a large number of corporations organized by small retail druggists for co-operative buying.

The complaint of the Commission against the Mennen Company alleged a violation of Section 5 of the Federal Trade Commission Act, which declares unlawful "unfair methods of competition," and alleged also a violation of Section 2 of the Clayton Act, which makes unlawful discrimination in prices between purchasers of commodities "where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

The Court held that there had been no violation of Section 2 of the Clayton Act, since the practice complained of admittedly did not tend to lessen competition between the Mennen Company and its competitors. At most, it tended to lessen competition among purchasers from the Mennen Company, which latter form of competition, the Court held, was not covered by Section 2 of the Clayton Act. This part of the decision was based on the fact that the history of the passage of the Act showed its purpose to be to reach the evil of "local price cutting," and on the fact that, as originally introduced, the Clayton Bill contained the words "with the purpose or intent thereby to destroy or wrongfully injure the business of a competitor of either such purchaser or seller" for which were substituted the words "where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce." It is not proposed further to examine this part of the decision.

The Court held also that there had been no violation of Section 5 of the Federal Trade Commission Act, which condemns "unfair methods of competition," basing its decision on the language of the Supreme Court in Federal Trade Commission v. Gratz, 253 U. S. 421, which will be referred to later and upon general language in a number of cases as to the "right" of the trader to sell his goods to whom he pleases and at any price which he may fix.

It is this part of the decision which merits somewhat careful examination and the pertinent facts not already mentioned will now be set out in resumé as they appear in the findings of the Commission, which findings as to facts are made conclusive by the Act "if supported by testimony."

The Mennen Co. used its classification of customers into "wholesalers" and "retailers" for denying to corporations, organized for co-operative purchasing, terms as good as those offered other (admitted) wholesalers and practiced this discrimination in price for the purpose of placing the co-operative corporations at a competitive disadvantage. It used price discrimination as an instrument to "break up" such corporations adopting this policy "after protests were made individually and at conventions of the National Wholesale Druggists Association" by regular wholesalers. This policy of discrimination served as a basis for an understanding between the regular wholesalers and the Mennen Company, that the wholesalers should push the sale of Mennen products more vigorously than those of manufacturers refusing to discriminate against the co-operative corporations. An overwhelming majority of the manufacturers of the goods in question sell to the corporations organized for co-operative purchasing without price discriminations, there being less than six manufacturers in the entire drug trade in the United States so discriminating.

These co-operative purchasing corporations have arisen largely within the last fifteen years and are the product of the efforts of small retailers to purchase at prices enabling them to meet the competition of larger retailers purchasing in larger quantities and at lower prices than the small retailers. Such co-operation lowers costs to small retailers by: (1) eliminating traveling salesmen to a large extent, substituting solicitation by telephone or catalogue, (2) securing quick turnovers, thus reducing overhead expenses and (3) doing business on a cash or short credit basis, thus eliminating bad debts and reducing the expenses of financing. The capital stock of these corporations is entirely owned by the co-operating retailers, they receiving their savings directly in the form of lower prices or indirectly in the form of dividends. These co-operative corporations effect a saving of a large part of the profit, which regular wholesalers demand in addition to the actual cost of the services which they render and such corporations effect also a saving in the actual cost of those services.

The growth of these corporations has been very rapid, both in number and volume of business. In 1920 twelve of them had gross sales aggregating almost twenty-three millions of dollars. The great bulk of the distributing trade is still handled by regular wholesalers. Among the customers of the Mennen Company they numbered 275, as compared with about 50 co-operative corporations.

The products of the Mennen Company are advertised so widely that it is practically necessary for all distributors at wholesale to handle them.

The findings of the Commission include the statement that the Mennen Company's policy of discriminating tends to hinder and lessen competition between groups of distributors performing identical functions,

to drive from the field the co-operative purchasing corporations "and thus to close one channel of distribution at wholesale for such products, which channel of distribution is entitled to an unhindered opportunity to demonstrate its economic efficiency on equal terms with the previously existing methods or agencies of distribution."

Is this an "unfair method of competition" within Sec. 5 of the Federal Trade Commission Act? The decision of the Court disposes of this question presented by these facts, in two ways:

1. Most of the opinion on this question is devoted to a discussion which may be summarized in the statement that a trader has the "right" to sell his goods at what prices he pleases. Like statements are quoted from numerous cases. So far as this is a statement of a result otherwise arrived at, it cannot be questioned, but when used as the premise of a syllogism designed to decide the case, it begs the whole question. In either event it may be passed over.

2. The opinion, in closing, notices the fact that the Mennen Company classifies as retailers the co-operative corporations already described and disposes of it by saying that though corporate in form they are retailers in substance, arriving at this conclusion by "piercing the veil of corporate entity." Students of this opinion will be disappointed that so small a part of it is devoted to this, the kernel of the controversy, the whole question in the case. So far as this fact is dealt with, the treatment is wholly conceptionalistic. Critics of the opinion may say, "Since these corporations were performing the functions of wholesalers, they were wholesalers as the true definitive test is that of function." Or they may say, "Granted these corporations are mere groups of retailers. They are nevertheless retailers who are performing the work of wholesalers, so the whole question is still before you and unanswered."

How is the question to be answered? Who is to answer it? A century and a half of machine industry have revolutionized production, as opposed to distribution, reducing costs of production to the merest fraction of what they formerly were. But the products of machine production are still being marketed through a marketing structure a large part of which has been in substance untouched by improvements since the days of handicraft production. Is co-operative buying an improvement? Who knows? But is it so unlikely to be an improvement that the Federal Trade Commission exceeds its powers in declaring a practice designed to destroy it "an unfair method of competition"? Here is a field in which judges might well tread with some caution for it lies at the center of the whole science of marketing. On this question we must look to the experts in marketing for light if anywhere, just as on matters of railroad rate structures we look to the experts in transportation. Is the Commission so constituted as to powers or personnel that we cannot give it reasonable latitude in picking out the lines bounding the area of unsocial trade practices? That is what we did as to the Interstate Commerce Commission. When it was given responsibility it returned much expertness and an amount of wisdom sufficient to satisfy reasonable expectations.

Had the reasons given in support of the result reached in this case been in terms of the facts of the extremely complicated situation involved, they would have carried more conviction. From the marketing standpoint there was, of course, merit in the position taken by the Mennen Company. For example, if these co-operative purchasing corporations should become general and effectuate a saving to the retailers by increasing the rapidity of the turnover, resulting in a decrease in the size of stocks carried, the larger stocks would still have to be carried by someone, if not by them. As a long time development, the Mennen Company might reasonably foresee this and other burdens being thrust back upon the manufacturer. From the standpoint of efficiency in distribution is that desirable or undesirable? Which link in the chain of distribution running from the producer of raw materials to the consumer of the finished product can most efficiently perform this and other functions? This is a highly complicated and technical question, upon which no opinion is ventured, except that, considering the training and burdens of our judges, they should not be called upon to decide it, and similar question, unless the case is clear. But this is a case upon which even expert opinion may reasonably differ, and it would have scarcely been unfortunate had the Commission's determination of it been allowed to stand.

Under the cases, it would have been something more than possible for the Court so to have held. Apart from dicta, question presented is not covered by any authority which would have precluded holding with the Commission, that this was an "unfair method of competition." Rather the reverse is true.

A unanimous decision of the Supreme Court in 1913 (Eastern States Lumber Association v. U. S., 234 U. S. 600) held violative of the Sherman Act the practice of retail lumber dealers' associations in sending to their members the names of wholesale lumber dealers committed to the practice of competing with the retailers for the custom of builders and contractors. It is true that in this case there was a combination of persons acting together with none such in the Mennen case, but group action in and of itself does not violate the Sherman Law. Either the object sought by the group must be opposed to good policy or the means used must be unlawful. In the lumber case, the means used to effectuate the objects of the associations were in and of themselves quite innocent, consisting merely of giving to members the names of wholesalers selling at retail, with the purpose that they should, and result that they did, refuse to buy lumber from the offending wholesalers. Neither the giving of information nor the refusal to contract with another is an unlawful act when considered *in vacuo*. The decision in the Lumber case, therefore, must rest upon the fact that the object sought, viz.: to restrict the trade in lumber to the existing trade channel which runs through the retailer on its way to the consumer, was opposed to public policy.

Now that is exactly the object sought by the Mennen Company. By its price discount, it sought to preserve the wholesaler as a link in the chain for distributing toilet articles. In fact, it is quite arguable that the Mennen Company had less justification than did the retail lumber dealers in the Lumber case. Those retail dealers were seeking to preserve their own business from destruction by the wholesalers. The Mennen Company was seeking to preserve not its own business but the businesses of others, viz., the wholesalers.

Concerning the legality of the object sought in the Lumber case, the Court there said:

> The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legis-

lated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted.

It is true that the Court in the Lumber case placed reliance upon the fact that a wholesaler selling at retail in one section of the country would be deprived of the custom of a retailer in another section, whom the wholesaler had not injured. But the solidarity of the interests of the retailers was certainly, as a practical matter, so substantial, the imminence of the danger to all retailers was so great, and the means adopted to meet it were so natural that the case cannot rest upon this ground. Though it be granted that the Mennen Company had some interest in the preservation of the wholesaler, yet that interest is hardly more substantial than the interest which one retailer of lumber had in the preservation of another retailer whom he now supports, expecting a return of support when his own business is attacked.

It is true that Mr. Justice McReynolds, speaking for the Court in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, announced in 1919 that the words "unfair methods of competition" did little more than codify existing law, and did not give the Commission power to search out and condemn novel practice detrimental to trade. Whether the law will ultimately shape itself in the restricted fashion suggested by this dictum is open to very serious question, but fully accepting the dictum as a statement of the law still leaves the Lumber case a weighty authority opposed to the decision in the Mennen Case. It is admitted in the Gratz case that the words "unfair methods of competition" cover practices "against public policy because of their dangerous tendency to hinder competition or create a monopoly." The Lumber case clearly recognizes the object to petrify existing trade channels as being opposed to the public policy sanctioned by the Sherman Act, and it will be generally admitted that the purpose of both the Federal Trade Commission Act and of the Clayton Act was to broaden rather than restrict the scope of regulation of trade, possible under the Sherman Act.

It is a matter of some surprise that the Lumber case was not mentioned in the Court's opinion in the Mennen case nor, indeed, in the brief of Counsel for the Commission.

It has not been overlooked that the order of the Commission here subject to review was much too broad. It prohibited the Mennen Company from selling to *any* retailer at prices higher than those charged wholesalers, if such retailers wanted to buy "the same grade, quality and quantity of commodities," as that bought by wholesalers. The order as framed would put ordinary retailers on the same basis as the co-operative purchasing corporations. But only the latter were performing the wholesaling functions as to storage, billing, shipping, collections, etc. If the Mennen Company must perform these functions, it is entitled to be paid an extra amount for so doing. The order should have been limited to prohibiting price discrimination among firms performing identical functions. While this objection was urged in the brief of counsel for the Mennen Company, and was not adequately met in the brief of the counsel for the Commission, it was not relied on by the Court in its decision. Moreover, it is not to be overlooked that Section 5 of the Federal Trade Commission Act gives the Court power to modify, as well as to affirm or set aside the orders of the Commission.

It is to be hoped that the broad question presented by this case may be passed on by the Supreme Court and that argument of counsel will then further enlighten the legal and business world by further stressing the marketing implications of any decision which may be rendered.

Sir Matthew Hale's Rules

(Taken from Memoirs of the Life, Character and Writings of Sir Matthew Hale, etc., by J. B. Williams, London 1835, p. 85.)

"Things necessary to be continually had in remembrance.

"I. That in the administration of justice, I am entrusted for God, the king, and country; and therefore,

"II. That it be done, 1st, uprightly: 2dly, deliberately: 3dly, resolutely.

"III. That I rest not upon my own understanding or strength, but implore and rest upon the direction and strength of God.

"IV. That in the execution of justice I carefully lay aside my own passions, and not give way to them, however provoked.

"V. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable and interruptions.

"VI. That I suffer not myself to be prepossessed with any judgment at all, till the whole business, and both parties be heard.

"VII. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.

"VIII. That in business capital, though my nature prompt me to pity, yet to consider that there is also a pity due to the country.

"IX. That I be not too rigid in matters conscientious, when all the harm is diversity of judgment.

"X. That I be not biassed with compassion to the poor, or favour to the rich, in point of justice.

"XI. That popular or court applause, or distaste, have no influence into anything I do in point of distribution of justice.

"XII. Not to be solicitous what men will say or think, so long as I keep myself exactly according to the rules of justice.

XIII. If in criminals it be a measuring cast, to incline to mercy and acquittal.

"XIV. In criminals that consist merely in words when no harm ensues, moderation is no injustice.

"XV. In criminals of blood, if the fact be evident, severity is justice.

"XVI. To abhor all private solicitations, of what kind soever and by whomsoever, in matters depending.

"XVII. To charge my servants: 1st, not to interpose in any business whatsoever: 2d, not to take any more than their known fees: 3d, not to give any undue precedence to causes: 4th, not to recommend counsel.

"XVIII. To be short and sparing at meals, that I may be fitted for business."

THE "NEW FEDERALIST" SERIES

Justice Rousseau A. Burch of the Kansas Supreme Court Writes on "Law and Progress," Showing the Tremendous Part Played by the Constitution in Our Development and Pointing Out That It Is an Instrument of Social Progress—Hon. Herbert S. Hadley, Ex-Governor of Missouri, Writes on "The Citizen's Power, Duty and Responsibility" Under Our Form of Government and Combats the Feeling of Individual Powerlessness Which Many Have

In the task of helping to explain and sustain American institutions by promoting a clear understanding of the reasons for them, the American Bar has an important part to play. Conscious of the need and the responsibility, the AMERICAN BAR ASSOCIATION JOURNAL has undertaken the program of printing a series of brief articles, beginning with the March issue, on American principles of government, under the title of "The New Federalist." There is not a particle of political significance in the title chosen. The historical political significance definitely attached to the name "Federalist" came after the publication of that remarkable series of Federalist Papers, in which Hamilton and Madison and Jay engaged in the task of enlisting the support and reaching the mind and heart of people in behalf of the Constitution under which we have lived and prospered so long.

These articles will not be addressed to the legal profession, which will find the justification of such contributions in the character of the work done and the importance of the proposed public service, but to those who need the information. They will be clearly written, reasoned and not declamatory, adapted to the fair intelligence of both native and foreign-born citizens, and will make a special effort to counteract current misconceptions on fundamental points.—(From announcement of the New Federalist series in the JOURNAL, February, 1923.)

Law and Progress

By HON. ROUSSEAU A. BURCH

Justice Supreme Court of Kansas

WITHIN modern times great things have occurred in the material features of our civilization which we regard as evidence of assured progress. We should not be hasty in reaching conclusions. A few years ago Germany had public order, industrial wealth, science, invention, scholarship, literature, art, and philosophy, and had practically abolished poverty and solved the problem of unemployment. These are accepted insignia of progress. They proved to be veneer on underlying racial traits and, with the ferocity of barbarians, Germany pulled down the house of civilization on the continent of Europe.

The notion of progress is itself marked with the characteristic of change. It takes on the hues of the moral, social, and political philosophies of the time, and the meaning of progress is whatever, consistently with its ideals, each age assigns to it. The result is, we cannot enumerate universal criteria of progress, or state a comprehensive law of progress, or point to its definite or ultimate goal.

By application of the scientific method to the study of nature, man has gained access to bounteous stores of energy and material which contribute to his convenience and welfare, as he understands them. He has learned some of nature's ways, and has adapted himself to them,—has learned to spread his sail before nature's wind. We are dimly conscious that there are powerful elemental natural forces which direct and control our societary evolution, but we have not yet interrogated nature respecting them as closely as we have respecting her physical laws. We have made the airplane compatible with the law of gravitation; but we have not yet discovered how to make stability and change, order and freedom, law and progress, dwell side by side in amity. Stability is just as essential as change. Without stability, man could not venture with confidence. Freedom cannot effectively realize itself except under conditions of order. Law makes for stability and order, and so furnishes the indispensable foundation for progress.

Man has risen through stages of savagery, and then through stages of barbarism, to a stage worthy to be called civilized. The process has been one of gradual, unhurried growth and development through patient ages of time, interrupted, however, by retrogressions, periods of arrested development, and frequent extinction of whole races of men. The results of the long struggle are evident in the present population of the globe, which is plainly of the most heterogeneous kind. The American Indian is at the point of disappearance. There are races still little removed from the brute, and there are civilized races to whom enough of the brute still clings to make them act like savages. In the United States, we burn men at the stake, loot the city in case of catastrophe, or as soon as police protection is withdrawn, are guilty of the atrocities which attend regularly fomented insurrections denominated strikes, and in the last four years have cheerfully killed nearly fifty thousand persons with our motor cars.

Each step in the development of man has been buttressed and forwarded by law. The clan, the tribe and the nation were possible only by virtue of what were essentially bonds of legality, holding their constituents together. What the rules were made little difference, so long as they secured cohesion and cooperation; and out of the prescriptive governability, the inherited disposition to submit to the laws, which early

forms of social organization inculcated, has come the progress of all civilized people.

That elaboration which is the distinguishing feature of modern progress—complexity of life, ever-widening circles of activities and relationships, expanding industry, trade and commerce, spreading nets of more and more finely meshed international associations and interests—involved us in the world war. The enthusiasm which sustained us during the war soon waned and, after the lapse of four and a half years from the signing of the armistice, we find ourselves groping for solutions of stupendous problems of readjustment. Not knowing just what is wrong, the undiscriminating blame the government and, because the government was established by the constitution, conclude the constitution must be at fault.

Manifestly, the constitution of the United States cannot be held responsible for the war and its confusions and consequences. Before the war we were beginning to feel the pressure of social forces which would bear heavily upon us under any liberal form of government. Now that pioneer days are over, the public domain has been occupied, population has increased and has gravitated toward congested centers, and we must turn from free expansion to restricted intensive development, we find it difficult to make the adjustment. We would find it just as difficult if we adopted the presidential primary. The future material progress of this country depends largely on the work of the chemist and the engineer. They are dependent on the supply of knowledge provided by scientific research, and that knowledge would not be supplied by depriving courts of the power to declare laws unconstitutional.

Social progress depends primarily on the qualities of the social units. It cannot be promoted by defectives and incapables. Biology has proved Emerson's statement that the gate of gifts closes when the child issues from its mother's womb. Contrary to the dream of the environmentalists, an original endowment of brain capacity cannot be increased by contact for a few swift years with industrial change. For some generations we have been weakening instead of strengthening the ability of the bulk of our population to solve the intricate problems incident to a complex civilization. We have not been producing as prolifically and conspicuously as formerly, strong stocks of superior men and women, with high capability to stand the strain of a transition crisis and lead us forward to new achievement. The reliable evidence on the subject indicates that the mentality of the masses of our population is not as great as we lately hoped and believed, and our educational systems are confessedly not functioning adequately to our needs. Professor Keller has said, what moves the masses of men is not thought, but emotion; what sets emotion going is interest; and for most men the circle of interest is closely drawn around self. It may be added that emotion is easily kindled to passion, and passion is the implacable enemy of progress. Other impediments to social progress exist, and some active factors of social degeneration are at work, none of which results from compulsion or constraint of the constitution, and none of which is remediable by tinkering with that instrument.

If there is to be social progress, the personal independence and self-determination of the individual must not be exposed to manifestations of despotic or arbitrary power. When our constitution was framed it had become clear there are three distinct, fundamental functions of government—the legislative, the executive, and the judicial. Liberty is jeopardized by lodging any two of them in the same body or person. As government becomes more and more extensive and involved, the lines of separation between departments will sometimes become indistinct, and will sometimes overlap, but experience will presently make the proper adjustment. The principle of separation of powers was utilized in framing the constitution. For a century and a third the balance has held true, and the people of the United States have been able to pursue their ends free from tyranny, and free from all fear of tyranny.

The territory over which the constitution became supreme law was divided into thirteen small states. A strong federal government was a necessity if hard-won independence and internal peace were to be secured, but the autonomy of the states was equally desirable, because local affairs are best administered by those whose interests are immediately affected. Both objects were attained by the constitution. The constitution permitted territorial expansion and the admission of new states. Vast territorial expansion occurred, as rapidly as conditions warranted new states were created, and through the partition of authority between federal and state governments has come undreamed of greatness, both extensive and intensive.

Our amazing economic development is due directly to the provisions of the constitution requiring commerce between the states to be free, and giving congress power to regulate domestic and foreign commerce. All sections of the country have been united by the railways, commerce has gone the full round, from cart and coach back to cart and coach in the forms of auto truck and auto bus, and we have created and carried on, not only an internal trade of immense proportions, but a world-wide foreign commerce.

Trade and commerce depend on industry, industry depends on finance, finance depends on a sound and stable currency, and in final analysis our domestic happiness and personal and national prosperity rest on the constitutional authority of congress over the subject of money, and the prohibition upon the states concerning money, bills of credit, and legal tender in payment of debts.

The foregoing exemplifications are sufficient to show competency of the constitution to fulfill the purposes for which it was ordained, whether we consider days of scanty population chiefly rural, or days of great cities crowded with people.

The constitution is devoted to subjects of fundamental importance. Ordinary legislation was left to congress and state legislatures. In dealing with fundamental subjects, general standards were recognized, except in those instances in which definite rules were essential, and in this way the constitution was rendered adaptable to progress.

The constitution protects liberty and property against aggression by both federal and state governments. What is liberty? The constitution does not tell us. The framers of the constitution understood liberty to include certain political and civil rights which had been established, modified and improved by changes in the habits of thought and action among the people, changes in the form and conceived functions of government, and the vicissitudes of private and public affairs, occurring in the course of centuries. One of the objects of the constitution, stated in the preamble, was to promote the general welfare. Conception of what the general welfare required had changed with the progress of society as much as the conception of liberty, and both would necessarily continue to change. There-

fore the constitution left the meaning of liberty to be determined, not by abstract philosophical speculation concerning the nature and rights of man, but by considering, in the light of the discipline of experience, the concrete facts existing at the time the right to liberty is challenged or asserted. New ranges of choice and conduct are freely permitted in the midst of the opportunities opened to the individual by progress, but his activities must be adjusted to demands of general good developed by progress.

The word property is not defined in the constitution. Progress multiplies subjects over which persons exercise dominion, and gives new attachments of interests. Enjoyment of both is protected, but, if need be, private property interests must be balanced with enlarged social interest, and may be regulated accordingly. That this is true whether property be devoted to public use or not, was strikingly shown by the recent decision of the federal supreme court that the right of a landlord to unreasonable rent and to dispossess tenants, may be suspended.

The same flexibility in application attends the provisions of the constitution relating to equality before the law, due process of law, and others, and to that most important reservation to the states of power known as the police power. Concerning this power the federal supreme court, in a unanimous opinion, said:

> "It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

These illustrations are sufficient to show how the provisions of the constitution may be continually energized by the expanding needs of a living people. Time and again the supreme court has refused to put words in the straight-jackets of unalterable definition. Railroads were unknown when the constituiton was adopted. When railroads were built, the commerce clause of the constitution embraced them. The constitution itself does not change; but because the extent to which its limitations go may be determined by the truth in respect to facts, it is an instrument of social progress.

What tends to promote the general welfare is a question of fact to be determined from the best evidence obtainable. The evidence is often meager, conflicting, and unsatisfactory, and opposing opinions will be strongly held. It took a long time to establish the fact that the saloon, hours and conditions of labor, safety devices, workmen's compensation, pure food, and other subjects, were social subjects. The courts cannot take on the fervor and the fury of him who first advocates reform, especially since so many proposals of reform are forgotten as soon as the election campaign is over. The courts should wait until the case is fairly proved. In some instances, they have sanctioned unconstitutional legislation by not doing so. In other instances they have caused social friction by delaying too long; but, in due season, statutes otherwise constitutional, that meet pressing social needs, will be sustained.

In the recent child-labor decision, the court disagreed with congress, not on account of differences in view concerning the ethics of the legislation, or on account of conservatism, or because of adherence to precedent, since precedent was not followed; but because of the reservation to the states of power to deal with their own internal affairs. Pressure is continually exerted upon congress to misuse its taxing power and its power over interstate commerce to regulate the local affairs of the state and, if the baleful practice were indulged, the states would soon be in vassalage to the government at Washington, and efficiency of that government would soon break down.

Uninformed and less excusable critics of the constitution are fond of teaching that it crystallized definite social, political and economic ideas in a rigid instrument, applicable to conditions believed to be stationary; and not many years ago frequent reference was made to our "unamendable constitution." The framers of the constitution provided for changes made necessary by progress, by the article relating to amendment. As early as 1798, the constitution was amended in an important particular. Between 1909 and 1920, the constitution was amended four times. In three instances but little more than a year elapsed between proposal of amendment and proclamation of ratification. Two of the amendments made definite extension of the principles of democracy, one was upon a purely social subject, and one had for its object the giving of authority to place the burden of taxatjon more heavily on wealth.

In the Talmud is a statement by Rabbi Hillel that "Whether anything be written or not, the life decides." American political life has reduced the provision of the constitution relating to presidential electors to a matter of form.

All human progress is by slow stages. Telegraphic communication was definitely suggested in 1753. The caterpillar feature of our tractors and of the tanks used in the war was patented in England in 1770. The principle of airplane construction was announced in 1809. The apostle Paul called attention to the fact that "That was not first which is spiritual, but that which is natural." The spiritual succeeds to the natural, never by sudden leaps, but always by imperceptible processes of amelioration. There are no short cuts to social improvement. The way is by nature's own way of evolution.

Power, Duty and Responsibility of the Individual Citizen

By HON. HERBERT S. HADLEY
Former Governor of Missouri

THOUGH the discussion of the question on which I have been asked to write involves some consideration of the fundamental principles of our representative democracy, what I say will, I fear, seem trite and commonplace to most of the readers of this Journal. The lawyers of the United States as a class understand their powers and perform their duties as citizens. They need no statement as to either. Further, the opinions of the members of the legal profession have an important if not a controlling influence on public thought and action. Nearly a century ago De Tocqueville in his commentaries on American institutions declared that "the lawyers of the United States constitute a counterpoise to the dangers of democracy." It is to the citizen, therefore, whose business or occupation does not require him frequently to consider, or directly to deal with the work of government, that what I have written is addressed.

The individual citizen may be dissatisfied or disappointed, or perhaps simply indifferent as to his

part in the general plan of our political system; but whatever may be his attitude it is upon the realization of his powers and the performance of his duties that the security of our government must depend. The strength of our institutions must be measured by the manner in which the individual citizen performs his duty to the State. I make these statements in full realization of the fact that our system of government is now undergoing a vigorous, though sometimes an insidious, attack by those who deny the correctness in theory and the success in practice of our representative democracy. In the many reactions we have suffered since the Great War, which was to make the world safe for democracy, there is none more surprising than the doubt that has come into the minds of many thoughtful people as to whether democracy is or can be a safe and effective form of government for the world. Into this discussion I will not enter; I will assume, in accordance with my own belief, the right, the duty and the capacity of the American people to rule. I will also assume that ours is the best system of government for our people, and that under it the majority should control, subject only to the limitations of our state and federal constitutions.

Coming, then, to the practical problems of this discussion, what can the individual citizen do under our political system to control or influence official affairs? What are his duties and responsibilities? To answer that he has a right to vote for delegates to a nominating convention, or for the candidates for nomination at a direct primary and for the candidates of the different parties on election day, may seem to mean little or nothing in so far as his own ideas may thereby find effective expression. It seems, in the actual conduct of government, a far cry from the vote of farmer Jones or laborer Smith in the primary or election to the enactment of laws at the state or national capitol, and sometimes at the city hall. There are many non-conductors between the opinion that these men may have as to municipal, state and national legislation or administration, and the laws that are finally enacted and the manner in which they are interpreted and enforced. Jones and Smith do not sit down and argue this question out to such a conclusion, yet to many such men there doubtless comes a feeling of hopelessness as to their accomplishing or influencing any results in government. They come to feel that it does not make any difference whether they vote at the primary or election, as there are powerful but invisible influences in control of official affairs which will, after all, be unaffected by anything that they may do or say.

The facts show that there is unquestionably a dangerously large number of people who do feel this way about their civic duties; and when we consider the number entitled to vote as compared with the number who do not vote at the primary and election, the problem of the indifferent citizen is by no means an unimportant one. In the last national election there were more than fifty-four millions of people in the United States legally entitled to vote, while only a few more than twenty-six million, or less than one-half of those of voting age, cast a ballot. And yet the number of those who took part in the last election was probably as large proportionately as in any national election since 1896. The number taking part in primary elections in the different states or districts varies greatly according to the degree of interest that may be felt in the result of the election; but on an average less than 25 per cent of those entitled to vote take part in the primary, and less than 50 per cent of those who vote at the election take part in the nomination of candidates.

That every citizen should perform his political and civic duties by voting at the primary and election will, I assume, not be seriously questioned, for the essential principle of our representative democracy is that everyone entitled to vote should do so. This does not mean that if everyone does vote at the primary and election we will be insured a better and abler class of representatives in public office; but it will increase the probability that they will be truly representative and that the people will control their own affairs. That our government is and should be representative is a statement we often accept without consideration or analysis as to what the statement means. It is not enough that it should be representative simply in form; those chosen to official positions should be representative of their constituents in the sense that they should understand their problems, their needs and their interests, and have the necessary ability and desire to safeguard them by official action.

A consideration of this question also presents one of the common misconceptions in reference to public affairs in this country that to a considerable extent, I believe, causes many citizens to be indifferent to their public duties. This misconception is that our municipal, state and national officials represent a low order of ability and integrity, and that this is for some reason necessarily and inevitably true. That we have had, and have now, incompetency and dishonestry in the public service is of course true, but that such conditions are general has not been my conclusion, based on a fairly extensive experience and knowledge of public affairs. I have had twenty years of public service in municipal, county and state office, and for over twenty-five years I have been brought into frequent contact with men in the public service of the nation, state and municipality. It is my opinion that the public generally secures better and more honest service for less money than banking, commercial or industrial enterprises secure from their officers or employees. I undertake to say that there is in the Army and Navy, in educational work (for that is a part, and a very important part of our public service) and in the technical branches of government service, such as the Geological Survey, a higher standard of ability and devotion to duty than can be found in any industrial or commercial organization in the world. There is an attraction in public service that causes men to seek and hold public office and work for less pay therein than they could make by similar effort in almost any profession or business.

I have had occasion to know somewhat intimately a number of state legislatures, and while I realize that this particular branch of the public service is the favorite editorial and rhetorical chopping block of critics and reformers, my opinion is that we get surprisingly good results in actual legislation when we consider the necessary haste and unscientific methods under which their work is usually performed. Further, I never knew a state legislature that was not fully representative. By that I mean that with a few exceptions the legislators represent more than the average of ability and integrity of their constituents, and understand fully and try to represent faithfully the interests and needs of their different districts.

What I have said about state legislatures is even more true about our National Congress. I believe that there is in Congress today (and in this opinion I am in accord with many careful students of present and past

conditions) a higher average of ability and integrity, of industry and devotion to public duty, than ever before in the history of the country. When we hear the usual disparaging remarks about state legislatures and congress we should remember that as long as men elected to enact our laws represent more than the average of ability and integrity of their constituents, we should criticize ourselves for deficiencies in intelligence and civic virtue, rather than the men whom we choose to represent us in this public service.

In so far as the ordinary elective office is concerned, the only test we have of the ability of one to fill it is the ability necessary to secure it. And this standard of qualification has stood the test of time and experience. Grover Cleveland, when congratulated once on the very able cabinet he had selected, remarked that he could find its equal in almost any county seat in the country. And Abraham Lincoln made a similar statement as to being able to select a satisfactory cabinet from any regiment in the Union army. Not only does our political system give to us, as a general proposition, public officials qualified to discharge the duties of the offices which they secure, but our political system is in itself a training school for public service. The man who goes into public service after a preliminary training and experience as a member of the city, county or state committee of his political party is better qualified to perform the duties of public office than one who has not had such a preliminary political experience. Our public service is in a way a profession in itself, and the man who has performed official duties in his party organization, who has had a preliminary experience as a city or county official before he secured an important state or national office, is as a general proposition better qualified to discharge the duties of his position than one who has come into the public service direct from business or professional life.

Though the ordinary citizen who has been derelict in his civic duties may admit on argument the truth of these propositions, he will probably meet you with the assertion that in one way or another, by direction or indirection, the "special interests" finally control in public affairs. That "special interests," so called, have been too influential in politics in this country is a fact that we must admit; but that this influence is less today than it ever was before is a fact that anyone familiar with the public service will also have to concede. And the extent to which such influences will affect the conduct of official affairs in the future depends on the manner in which the ordinary citizens perform their civic duties.

But the question will probably be asked by the ordinary ciitzen, "How can I do that which will work effectively for good government, and translate into concrete results my own opinions as to official affairs?" The answer to this question cannot be given in any definite formula. The direct primary has greatly broadened the scope of activity and influence of the ordinary citizen. With all of its faults and weaknesses (and they are by no means inconsiderable in number or importance), the primary system of nominations is an improvement over the old convention system. It has greatly increased the number of those who participate in the making of nominations, and it has been an incentive to and a training school for the performance of the duties of citizenship. It has increased the interest of the people generally in political questions and in the character of the men who represent them in public office. It has not, and it will not correct all our political evils, and when no important issues are to be determined the primary system may seem to, and often does, function poorly; but where candidacies of importance are to be decided, then it furnishes the best and the necessary means for the people to control their own affairs. And the primary system has broadened, and it will continue to broaden the opportunity and increase the desire of the people to run their own government. Farmer Jones and laborer Smith may feel that their vote may not count for much in the primary election, but they cannot feel that their vote will not count at all.

Another cause of the failure of the ordinary citizen to vote at the primary and on election day has been his failure to realize that our system of government is a system of government by political parties. The only way we can have responsible government in this country is through political parties. The candidates of a political party seek the suffrages of the people on a definite platform of principles and policies, and the successful party should be held responsible for the results of its administration. For good government the party in power should be rewarded by reelection; for bad government it should be defeated. In recent years a certain class of reformers and political agitators have delighted to assert that we have too much politics in our public affairs, have tried to break down political parties, and to create blocs or combinations within party lines for the advancement of special interests without regard to the general obligations of party platforms. Such efforts in the end will prove injurious rather than beneficial. What we really need in this country is not less politics but more politics. For when party responsibility and the party government end, personal irresponsibility of public officials begins. Party government and party responsibility are necessary for a representative political system, and the impairment of either will result in personal irresponsibility and confusion in government. Further, the impairment of the principle of party government will greatly lessen the influence of the individual voter in public affairs. For the political party furnishes the best if not the only effective agency through which the ordinary citizen can hope to have his opinion as to candidates and policies translated into concrete results.

But the ordinary citizen may say, "I agree with all of these statements, but what in a concrete way can I do to make my influence felt? How can I accomplish anything as one of the fifty-four millions of voters?" The answer to this question also cannot be given in any definite formula. The ordinary citizen helps to make up the majority on election day, or is numbered among the minority; he contributes to the extent of his talent, ability and activities to the shaping of party policies and the selection of party candidates. He should understand first of all that he can accomplish but little if he places the peace and comfort of his own fireside above the importance of his civic duties, and he should also understand that there is no royal road to influence and success in politics, any more than there is in education or any other activity or calling. The results that the ordinary citizen accomplishes in political and official affairs are determined, as in business or professional life, by the industry, the character, the ability with which he does his work.

The ordinary citizen can and should belong to the clubs of the party of which he is a member; he should and can, if he so desires, have some part in the conduct of his party's affairs; he can engage in discussions of public questions and candidates in political meetings, in personal con-

versations and in communications to the public press. Candidates for office and usually public officials welcome the expressions of the opinions of their constituents. The number and the character of the opportunities open to every citizen to make his influence felt can be best emphasized by the inquiry, "Under what system of government could they be more numerous or more effective than under our own?" It is a principle of economics that the value of anything can be best determined by trying to do without it; and this principle applies as truly in the matter of government. Our representative democracy and our federal system are the distinctive contributions of the American people to the science of Government. Though the representative principle had some application in the government of Great Britain prior to the American Revolution, ours was the first experiment in government where all official authority in the state and the nation came from the people and was to be exercised by their chosen representatives. That it is a government whose powers come from the people makes it a government of and for the people, if only the individual voter will understand his duties and responsibilities as a citizen, and perform them to the limit of his ability.

Revolutionary Stock Is Increasing

"The 47,330,000 estimated as representing the amount of native white stock in 1920 may be considered as the number of white persons who would have been enumerated in that year had there been no immigration nor emigration since 1790 and if, nevertheless, the rate of natural increase [that is, increase due to excess of births over deaths] had been what, historically, it appears to have been. The total number descended, *in whole or in part,* from white persons enumerated in 1790 was, of course, considerably larger because of the intermingling of native and foreign stock. . . . It appears to be evident that this blood strain [the native white stock] in the population is not disappearing, but is increasing at a reasonable and rather normal rate, ranging somewhere between 10 and 12 per cent, an increase contributed by different parts of the country in widely varying percentages."—From Census Monograph on Increase of Population, 1910-1920.

Half a Century in Practice

Frederick W. Lehman, former president of the American Bar Association, celebrated the completion of half a century in the legal profession on March 1 at St. Louis, Missouri. He delivered an address on this occasion to the St. Louis Bar Association at the University Club of that city, directing his remarks particularly to newly admitted members of the bar, who were guests of the organization. Among the bits of advice which the former president gave to the young lawyers was a warning against specializing too soon. "The best specialist," he said, "is one who has built upon a broad foundation of general practice. I would advise a diversified rather than a special clientèle, and particularly rather than a single client. With a general practice there is greater independence. But counsel for the great corporations have exceptional opportunities for rendering good and useful service, if they maintain their independence, and hold their clients within the bounds of law and public policy."

Answers to Professional Ethics Questions

The Committee on Professional Ethics of the New York County Lawyers Association has issued the following answers to questions submitted:

Question No. 217.—In the opinion of the Committee may or should a lawyer, who has secured a postponement of legal proceedings, on the ground that he is unable to ascertain the present whereabouts of his client, subsequently disclose to counsel for the adverse party, or to the Court, but without the consent of his client, either that he has learned the present address of his client, or what such address is, the client having communicated such knowledge to the lawyer in confidence?

Answer No. 217.—In the opinion of the Committee, a client's confidence (with certain exceptions such as the proposed commission of a crime) may not properly be disclosed by the lawyer without the client's consent, but the lawyer, having obtained a favor of indulgence from the Court by asserted ignorance of his client's whereabouts, cannot in good morals, after learning his client's address, conceal the fact that he knows it and continue to benefit by his previously asserted and presumably continued ignorance.

Therefore, where such a situation of a continuing benefit exists, he should advise counsel for the adverse party, and in a proper case, the Court, that he now knows his client's whereabouts, but that it has been disclosed to him in confidence.

Question No. 218.—When a client brings suit for rescission of a contract made by him with a third person upon the ground that his lawyer deceived him and thereby induced him to make the contract, may the lawyer, whose good faith is thus attacked, properly disclose to counsel for the defendant the communications which he actually made to his client, and which are not those of which his client falsely accuses him as the basis of his suit?

Answer No. 218.—In the opinion of the Committee, the client, by making the charges against the lawyer, waives the privilege of the otherwise confidential communication; and therefore it is of the opinion that such disclosure may be made.

Question No. 219.—In the opinion of the Committee, will it offend professional ethics for a lawyer to write his *clients* and *friends,* communicating to them the necessity and advantages of will making?

Answer No. 219.—In the opinion of the Committee, any general communication of the kind would be improper as a solicitation of business. In special cases such a letter might be justified by personal relations or circumstances.

Taking Silk

In the list of members of the Junior Bar, who were recently admitted "within the Bar," taking rank as King's Counsel, at the Law Courts appears the name of Mr. John A. Barratt of the Inner Temple, also a member of the Bar of New York and of the Bar of the United States Supreme Court. The London Daily Telegraph of Feb. 15 thus describes the ceremony: "The formalities of admission followed the usual practice. The candidates, wearing for the first time full-bottomed wigs and silk gowns over Court dress, proceeded in a body to one of the courts, where the presiding judge called each separately by name and, having anounced that his Majesty the King had been pleased to appoint him one of his counsel 'learned in the law,' called upon him to take his place 'within the Bar,' which technically is the front row of seats reserved for counsel. Then, having bowed to the Bench, and to the members of the Bar assembled to his right and left and behind, the new K.C. proceeded to each of the other courts in turn and went through precisely the same proceedings. The total number of King's Counsel is now about 340."

REVIEW OF RECENT SUPREME COURT DECISIONS

Carrier's Liability Under Cummins Amendment—Property Delayed in Transit in Interstate Commerce not Taxable Where Detained—Estoppel—State Statute Imposing Liability for Interstate Freight Claims not Paid or Rejected in Ninety Days—Powers of Railroad Labor Board—Bill Poster Combination and Sherman Act—State Boundary Dispute—Validity and Infringement of Patents

By Edgar Bronson Tolman

Carriers,—Cummins Amendment

Under the Cummins Amendment the carrier's liability is limited to the amount fixed in the express receipt although that receipt is not signed by the shipper.

American Railway Express Co. v. *Lindenberg,* Adv. Ops. 227, Sup. Ct. Rep. 206.

The Cummins Amendment, as amended, provides that every carrier shall be liable for the full actual loss or damage to property carried by it, with certain exceptions. The one which is here relevant excepts property as to which the carrier is authorized by the Interstate Commerce Commission to maintain rates dependent "upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property." As to such property the carrier is to be liable only up to the value so declared.

Respondent sent goods in interstate shipment by the petitioner company, which issued to the shipper a receipt for his property expressly limiting the liability of the carrier to a certain amount for each hundred pounds and each pound thereover. The rate charged petitioner was on the basis of this limited liability. The goods were seriously damaged in transit. The carrier contended that its liability was limited to $110, as fixed by the terms of the receipt, but the trial court gave plaintiff judgment for $916.15, the full amount of damage. This judgment was affirmed by the Supreme Court of Appeals of West Virginia on the ground that the carrier did not take from the shipper a written declaration of value *signed by him.* On certiorari to the Supreme Court the judgment was reversed.

Mr. Justice Sutherland delivered the opinion of the Court. It was first contended that the petitioner was never expressly authorized by the Commission to establish rates dependent on the declared value because it had not been a party to the proceedings before the Commission which resulted in an order in conformity with the proviso in the Cummins Amendment. To this the learned Justice replied that the petitioner had filed a schedule in accordance with and referring to this order. He continued:

> The transportation charges were in conformity with the tariff, and the receipt issued, in so far as the limitation of liability is concerned, was in substantial accord with the authorized receipt. The petitioner appears to have proceeded upon the assumption that the publication and filing of the tariff were authorized by the Commission's order, and there is nothing in the record to indicate that the Commission did not so regard it. A copy of the tariff, certified by the Secretary of the Commission, was put in evidence. If these facts do not warrant the logical inference of a grant of authority, they do afford the basis for a legal presumption to that effect. . . .
>
> It is a rule of general application that "where an act is done which can be done legally only after the performance of some prior act, proof of the latter carries with it a presumption of the due performance of the prior act."

The second contention of the shipper was stated and answered in the following words:

> It is next contended that the receipt which was issued was unlawful and void because it contained conditions forbidden by the Cummins Amendment and prior statutes, the principal condition being a limitation of the carrier's liability to its own routes or lines. But it does not appear that the shipment in question came within the terms of any of these conditions or that the obligations of petitioner in respect of the matter were in any way affected thereby. Assuming their unlawful character, there is no difficulty in separating them from the condition limiting the liabilty by the declared valuation.

And on the principal point the learned Justice said in part as follows:

> Neither the statute nor the order of the Commission requires the signature of the shipper. The pertinent words of the statute are: " . . . rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value. . . . " It is not to be supposed that the Commission would attempt to add anything to the substantive requirements of the statute, and its order does not purport to do so; but the form of receipt which the express companies were authorized to adopt contains a recital to the effect that as evidence of the shipper's agreement to the printed conditions he "accepts and signs this receipt," and a blank space is provided for his signature. Naturally, such signature would be desirable as constituting the most satisfactory evidence of the shipper's agreement, but it is not made a prerequisite without which no agreement will result. . .
>
> The respondent, by receiving and acting upon the receipt, although signed only by the petitioner, assented to its terms and the same thereby became the written agreement of the parties.

The case was argued by Mr. A. M. Hartung for the Express Company and by Messrs. E. B. Dyer and Morgan Owen for the shipper.

Carriers,—Due Process, Practice

A state statute making carriers liable upon any intrastate freight claim not paid or rejected within ninety days from the date presented does not deny due process of law.

Southern Railway Co. v *Clift,* Adv. Ops. 140, Sup. Ct. Rep. 126.

An intrastate shipper secured a judgment against the railroad company in an Indiana state court under a statute of that state the constitutionality of which was here called into question. The Act authorizes claimants for loss to intrastate freight shipments to present their claims to one of several classes of the carrier's agents, and then provides that the carrier shall either pay or reject the claim within ninety days of the date presented, and that if the carrier takes neither action within that time, the claim shall stand admitted as a liability due the shipper. Judgment for plaintiff was affirmed by the Supreme Court of Indiana and on

writ of error again by the Supreme Court of the United States.

Mr. Justice McKenna delivered the opinion of the Court. He first considered a motion to dismiss made by the defendant in error. One argument advanced in support of the motion was that the judgment had not become final when the transcript was filed because the statute gave "either party" sixty days within which to file a petition for rehearing and that hence the successful party as well as the unsuccessful had this right. The learned Justice disposed of this unusual contention as follows:

> The contention is curious. Legal procedure is a facility of rights, and rights achieved, its purpose is done. A successful litigant does not need the delays and provision of a rehearing. He has more efficient and enduring relief. His affliction may be solaced by not enforcing the victory which is the cause of it. The contention of defendant in error is so obviously untenable that further comment upon it would be the veriest supererogation.

Part of the opinion in respect to the principal question is as follows:

> The service of a railroad is in the public interest; it is compulsory, and its purpose and duty are the transportation of persons and things promptly and safely, and the purpose and duty are fortified by responsibility for neglect of them or violation of them. And legislation may make an element of responsibility an early payment of loss or notification of controversy that responsibility may be enforced if it exist. In the legislation under review there is no impediment to investigation. Considering the facilities of the railroad company there is time for investigation and what can be discovered by it, and if controversy is resolved upon, the procedure of the law and the principles which direct the decisions of the law are available against the claim in whole or in part. Counsel is, therefore, in error, in the statement that the statute prohibits the railroad "from contesting the justice of the claim which has been presented to it, and from showing, even though the claim is justified to a certain amount, it is not just to the extent claimed."

The case was argued by Mr. John D. Welman for the railroad company and by Mr. Thomas M. McDonald, the shipper.

Interstate Commerce

Logs started on an interstate journey and detained at a point on the river in the state where they were cut, solely to insure their safe transport, are not thereby taxable by that state.

Champlain Realty Co. v. *Town of Brattleboro,* Adv. Ops. 165, Sup. Ct. Rep. 146.

The Champlain Realty Company cut pulp wood logs at various points in Vermont, and in the spring of 1919 floated them down the West River, which is entirely within that state. The Company intended to transport the logs from the West River into the Connecticut and so to its mill maintained at Hinsdale, New Hampshire. Most of the logs floated between March 25 and April 3 were held a week or two at Brattleboro, Vermont, at a boom placed at the mouth of the West River, because the waters of the Connecticut were then so high that the Company was afraid to send the logs down the swift current. Logs floated after April 3rd went through without stopping at Brattleboro. But on those held at Brattleboro, the town levied and collected a tax, and the Company brought this suit to recover it back. The County Court gave judgment for the Company, but the Supreme Court of Vermont reversed the judgment, holding that Coe v. Errol, 116 U. S. 517, applied, and that the interstate journey of the logs did not begin until they had left Brattleboro. On writ of certiorari to the Supreme Court of the United States, judgment was again reversed and the cause remanded.

The CHIEF JUSTICE delivered the opinion of the Court. He reviewed the facts and quoted the general principle laid down in Coe v. Errol. He then said:

> Did the fact that before April 3rd the waters of the Connecticut were frozen, or so high as to prevent the logs reaching Hinsdale, requiring a temporary halting at the mouth of the West River, break the real continuity of the interstate journey? We think not. The preparation for the interstate journey had all been completed at the town on the West River where the wood had been put in the stream. The boom at the mouth of the West River did not constitute an entrepot or depot for the gathering of logs preparatory for the final journey. It was only a safety appliance in the course of the journey. It was a harbor of refuge from danger to a shipment on its way. It was not used by the owner for any beneficial purpose of his own except to facilitate the safe delivery of the wood at Hinsdale on their final journey already begun. The logs were not detained to be classified, measured, counted or in any way dealt with by the owner for his benefit except to save from destruction in the course of their journey that but for natural causes, over which he could exercise no control, would have been actually continuous. This was not the case in Coe v. Errol. It is evident from the statement of that case, and Mr. Justice Bradley's language that the logs were partly drawn and partly floated to Errol and deposited some in the stream and some on the banks, where "they were to remain until it should be convenient to send them to their destination" and they were being gathered there for the whole previous winter season. It was an entrepot or depot as the Justice several times describes it. The mere fact that the owner intended to send them out of the State under such circumstances did not put them into transit in interstate commerce. But here, we have the intention put into accomplishment by launching, and manifested by an actually continuous journey of more than half the drive, with a halting of less than half of it in the course of the interstate journey to save it from loss, and only for that purpose.

He reviewed and distinguished other cases relied upon by the Vermont Supreme Court, and defined the distinction as follows:

> The interstate commerce clause of the Constitution does not give immunity to movable property from local taxation which is not discriminative unless it is in actual continuous transit in interstate commerce. When it is shipped by a common carrier from one State to another, in the course of such an uninterrupted journey, it is clearly immune. The doubt arises when there are interruptions in the journey and when the property in its transportation is under the complete control of the owner during the passage. If the interruptions are only to promote the safe or convenient transit, then the continuity of the interstate trip is not broken.

The case was argued by Messrs. William C. Cannon and Melville P. Maurice for the Company and by Messrs. Arthur P. Carpenter and Ernest W. Gibson for the Town of Brattleboro.

Local Improvements,—Estoppel

A property owner who connects his property with a sewer is estopped to contest the validity of the proceedings establishing the sewer district.

St. Louis Malleable Casting Co. v. *George C. Prendergast Construction Co.,* Adv. Ops. 217, Sup. Ct. Rep. 187.

The owner of property assessed for a special tax to pay the cost of the construction of sewers in a Missouri sewer district brought suit in equity to cancel the tax bill issued against his property in respect to the assessment. Defendant, as the contractor who built the sewer, held the tax bill. Complainant contended that it had been denied a hear-

ing as to the apportionment of the cost between the several lots assessed and their owners, and as to property excluded from the district. The trial court dismissed the suit, and in affirming this judgment the Supreme Court of Missouri found that the allegations of the petition were not supported by the evidence, and specifically that the "sewer had been fully completed when this suit was brought and appellant had connected its said premises with this sewer and was in actual enjoyment of the benefits thereof." On this account the court held petitioner was estopped from contesting the validity of the tax bill. With this conclusion the Supreme Court of the United States, to which the case came of writ of error, was in accord, and the decree was accordingly affirmed.

Mr. Justice McKenna delivered the opinion of the Court. He said in part:

> The evidence leaves no doubt of the fact that plaintiff, during the construction of the district sewer, made application for a license to connect with it, and afterward did connect with it. The only reply that counsel makes is that the court meant nothing more by its conclusion and the case cited "than the statement of an abstract legal principle" which was "in no way connected up with the evidence." It is further said that "Nowhere in the statement does the Supreme Court find any facts constituting an estoppel."
>
> The comment is not justified. Our quotations from the court's opinion establish the contrary, and that the plaintiff did something more than stand by and make no protest; it availed of the benefits of the sewer. The State cases cited are, therefore, not in point. . . .
>
> We are not called upon to resolve the uncertainty, if any there be, in the grounds of the court's ruling upon the constitutional questions. It is enough for our action that the court considered plaintiff estopped to contest the validity of the sewer or the validity of the tax which was imposed by connecting its premises with the sewer. In that conclusion we concur.

The case was argued by Mr. Lambert E. Walther for the property owner and by Mr. William K. Koerner for the contractor.

Railroad Labor Board

The decisions of the Railroad Labor Board not being compulsory, its jurisdiction is not limited by a consideration of legal rights and in providing the machinery for arbitration it may accordingly decide how representatives of the arbitrating parties should be chosen.

Pennsylvania Railroad Co. v. *U. S. Railroad Labor Board,* Adv. Ops. 356, Sup. Ct. Rep. 278.

When on March 1, 1920, the railroads were restored to private control there were pending between the companies and their employees certain disputes as to wages and working conditions. On April 15, 1920, the Railroad Labor Board, called into being by the Transportation Act of that year, became organized, and it immediately assumed jurisdiction of these disputes, and issued in respect to them a series of decisions out of which arose the present case. On July 2, the Board issued a decision covering wage demands, but a determination of questions of working conditions was postponed until April 14, 1921, when Decision No. 119, covering this subject, was promulgated. This decision announced that the working conditions fixed by the so-called National Agreements, entered into during Federal control, would not be in effect after July 1, and it directed the carriers and employees to meet in conferences before that date to attempt to reach an agreement as to working conditions, which should prevail thereafter. Furthermore, it laid down certain principles with which any rules agreed upon should be consistent. Two of these principles were:

> 5. The right of such lawful organization to act toward lawful objects through representatives of its own choice, whether employees of a particular carrier or otherwise, shall be agreed to by management.
>
> 15. The majority of any craft of class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.

In May of that year the officers of the Federal Shop Crafts of the Pennsylvania System, affiliated with the American Federation of Labor, met with officials of the Pennsylvania Railroad Company proposing to discuss working conditions to govern these lines. The Company contended that these representatives were not properly accredited and refused to deal with them. A dispute arose as to how the representatives of the employees should be chosen, and as a result both the employees and the company sent out ballots for election of delegates. The company met with delegates selected by ballots prepared by it (less than one-tenth of the employees voting), and an agreement was reached. The Federation filed a complaint with the Board, which held that neither ballot was proper and directed a new election on a specified form of ballot. When the Board refused to vacate this decision the Company filed this bill in the District Court for the Northern District of Illinois asking that the Board be enjoined from its alleged unlawful acts and particularly its threatened official publication that the Company had violated the Board's decision. (Such official publication is authorized by Section 313 and is one of the means whereby the sanction of public opinion is applied to enforce the rulings of the Board). The District Court granted the injunction, the Circuit Court of Appeals for the Seventh Circuit reversed this decree, and on appeal to the Supreme Court the decree of the Circuit Court of Appeals was affirmed.

The CHIEF JUSTICE delivered the opinion of the Court. After reviewing the facts he summarized the Act, section by section, and expressed himself as follows as to its general purpose:

> The decisions of the Labor Board are not to be enforced by process. The only sanction of its decision is to be the force of public opinion invoked by the fairness of a full hearing, the intrinsic justice of the conclusion, strengthened by the official prestige of the Board, and the full publication of the violation of such decision by any party to the proceeding. The evident thought of Congress in these provisions is that the economic interest of every member of the Public in the undisturbed flow of interstate commerce and the acute inconvenience to which all must be subjected by an interruption caused by a serious and widespread labor dispute, fastens public attention closely on all the circumstances of the controversy and arouses public criticism of the side thought to be at fault. The function of the Labor Board is to direct that public criticism against the party who, it thinks, justly deserves it.

The learned Chief Justice then considered the respects in which, as the Company contended, the Board had exceeded its powers. He held first that the jurisdiction of the Board is not dependent on a joint submission to it of a controversy, but that if adjustment boards, as provided by Section 301,

are not agreed upon, either party may bring the matter before the Labor Board.

The Company argued that labor union was not such an "organization of employees" as could institute the hearing. On this he said:

> We find nothing in the Act to impose any such limitation if the organization in other respects fulfills the description of the Act. Congress has frequently recognized the legality of labor unions, United Mine Workers v. Coronado Coal Co. (decided June 5, 1922), and no reason suggests itself why such an association, if its membership is properly inclusive, may not be regarded as among the organizations of employees referred to in this legislation.

He likewise rejected the contention that the Board did not have jurisdiction to determine who might represent the employees. On this point he said:

> Such a construction would give either side an easy opportunity to defeat the operation of the Act and to prevent the Labor Board from considering any dispute. It would tend to make the Act unworkable. If the Board has jurisdiction to hear representatives of the employees, it must of necessity have the power to determine who are proper representatives of the employees. That is a condition precedent to its effective exercise of jurisdiction at all. One of its specific powers conferred by Section 308 is to "make regulations necessary for the efficient execution of the functions vested in it by this title." This must include the authority to determine who are proper representatives of the employees and to make reasonable rules for ascertaining the will of the employees in the matter.

Furthermore, he pointed out that the question of who should be representatives was itself an important working condition.

The next objection of the Company was that in Principles 5 and 15 the Board compelled that Company to recognize labor unions in conducting its business, and thus took away its inherent right to deal with individual representatives. The learned Chief Justice said:

> But title III was not enacted to provide a tribunal to determine what were the legal rights and obligations of railway employers and employees or to enforce or protect them. Courts can do that. The Labor Board was created to decide how the parties ought to exercise their legal rights so as to enable them to cooperate in running the railroad. It was to reach a fair compromise between the parties without regard to the legal rights upon which each side might insist in a court of law. The Board is to act as a Board of Arbitration. It is to give expression to its view of the moral obligation of each side as members of society to agree upon a basis for cooperation in the work of running the railroad in the public interest. . .
>
> The statute does not require the Railroad Company to recognize or to deal with, or confer with labor unions. It does not require employees to deal with their employers through their fellow employees. But we think it does vest the Labor Board with power to decide how such representatives ought to be chosen with a view to securing a satisfactory cooperation and leaves it to the two sides to accept or reject the decision. The statute provides the machinery for conferences, the hearings, the decisions and the moral sanction. The Labor Board must comply with the requirements of the statute; but having thus complied, it is not in its reasonings and conclusions limited as a court is limited to a consideration of the legal rights of the parties.

In conclusion he said:

> It is not for us to express any opinion upon the merits of these principles and decisions. All that we may do in this case is to hold, as we do, that they were within the lawful function of the Board to render, and not being compulsory, violate no legal or equitable right of the complaining company.

The case was argued by Mr. F. D. McKenney for the railroad company and by Mr. Blackburn Esterline for the Labor Board.

Sherman Act

A nation-wide combination of bill-posters to post advertisements sent in interstate commerce only on terms fixed and for persons arbitrarily selected by them, held violative of the Sherman Act.

Charles A. Ramsay Co. v. *Associated Bill Posters,* Adv. Ops. 208, Sup. Ct. Rep. 167.

In this opinion the Supreme Court, to which the case came on writ of error, reversed the judgment entered for defendants upon demurrer by the District Court for the Southern District of New York and again by the Circuit Court of Appeals for the Second Circuit.

Two actions were brought for treble damages under the Sherman Act by corporations engaged in soliciting advertising and preparing and posting lithographed posters in various states. Plaintiffs alleged that they were practically put out of business by reason of a conspiracy of bill-posters organized into defendant corporation which controlled bill-posting in the United States and Canada. This control, it was alleged, was effected by a system of practices among which were restricting membership to one bill-poster in each community, buying out competitors with organization funds, fixing prices, prohibiting members from dealing with any except certain arbitrarily selected solicitors, and coercing manufacturers from furnishing non-members with materials.

The lower courts held that the posting of the advertisements after they had reached their destination was merely incidental to interstate commerce, and hence the agreement complained of did not fall within the Sherman Act.

Mr. Justice McReynolds delivered the opinion of the Court. He said:

> We cannot accept this view. The alleged combination is nation-wide; members of the Association are bound by agreement to pursue a certain course of business, designed and probably adequate materially to interfere with the free flow of commerce among the States and with Canada. As a direct result of the defendants' joint acts plaintiff's interstate and foreign business has been greatly limited or destroyed. Hopkins v. United States is not applicable. There the holding was that the rules, regulations and practices of the association directly affected local business only. The purpose of the combination here challenged is to destroy competition and secure a monopoly by limiting and restricting commerce in posters to channels dictated by the confederates, to exclude from such trade the undesired, including the plaintiffs, and to enrich the members by demanding non-competitive prices. The allegations clearly show the result has been as designed, that the statute has been violated and plaintiff's business has suffered. . . The fundamental purpose of the Sherman Act was to secure equality of opportunity and to protect the public against evils commonly incident to destruction of competition through monopolies and combinations in restraint of trade. The alleged actions of defendants are directly opposed to this beneficent purpose and are denounced by the statute.

The case was argued by Messrs. John A. Hartpence and Thomas G. Haight for the advertising solicitors and by Mr. Richard T. Greene for the bill-posters.

Suits Between States,—Boundary Disputes

The "south bank" of the Red River, along which lies the boundary between Texas and Oklahoma, is the relatively permanent elevation which separates the river bed from the adjoining upland, and which confines the stream except in times of extraordinary overflow.

Oklahoma v. *Texas,* Adv. Ops. 241, Sup. Ct. Rep. 221.

The discovery of oil in certain parts of the bed of the Red River rendered important the dispute

between Oklahoma and Texas as to the exact location of the interstate boundary along that stream. An opinion delivered April 11, 1921, recognized the boundary (as fixed by the Spanish-American treaty of 1819) as along the south bank of the river. Just where lay the "south bank" remained to be decided. The opinion of the Supreme Court Oklahoma v. Texas, Adv. Ops. 444, Sup. Ct. Rep. 406, reviewed in the November, 1922, number of the Journal, merely dealt with controversies as to ownership of specific parts of the river bed.

The Red River, flowing through a generally arid country, is a stream at most times of the year occupying but a small part of a river-bed from one-third to more than a mile in breadth. The margins of this bed are defined by cut banks from two to ten feet in height and only at times of unusual flood does the water overflow these banks. The stream does, however, wander from channel to channel in this bed. The river lies in a valley, well defined by bluffs or hills, and from two to fifteen or more miles in width. Oklahoma and the United States contended that the "south bank" lay at the foot of the bluffs which border this valley. Texas argued that the boundary lay along the edge of the water at its usual level. But the Supreme Court, in this opinion, decided that neither of these contentions was correct, but that the line lay intermediate between these two.

Mr. Justice Van Devanter delivered the opinion of the Court. He pointed out what language in the text of the treaty compelled the conclusion that the bank of the river, and not the river itself, was the boundary, and then considered the cases where boundaries on river banks had been defined by the court. This consideration brought him to the following conclusion:

> Upon the authority of these cases, and upon principle as well, we hold that the bank intended by the treaty provision is the water-washed and relatively permanent elevation or acclivity at the outer line of the river bed which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the waters within the bed and to preserve the course of the river, and that the boundary intended is on and along the bank at the average or mean level attained by the waters in the periods when they reach and wash the bank without overflowing it. When we speak of the bed we include all of the area which is kept practically bare of vegetation by the wash of the waters of the river from year to year in their onward course, although parts of it are left dry for months at a time; and we exclude the lateral valleys which have the characteristics of relatively fast land and usually are covered by upland grasses and vegetation, although temporarily overflowed in exceptional instances when the river is at flood.

The fact that the treaty provided that the use of the waters of the river should be common to both parties, was not thought to be inconsistent with this conclusion:

> As already observed, these words show that the boundary intended is "on" the bank. No doubt they reserve and secure a right of access to the water, at all stages, adequate to the enjoyment of the permitted use; but they afford no basis for regarding the boundary as below the bank or within the river bed.

The learned Justice described in some detail the actual physiography of the river, and then said:

> This survey of the physical situation demonstrates that the banks of the river are neither the ranges of bluffs which mark the exterior limits of the valley, nor the low shifting elevations within the sand bed. And that this is the natural and reasonable view of the situation is illustrated by a long course of public and private action.
>
> The valley land always has been dealt with as upland. The United States surveyed and disposed of that on the north side under her land laws. Both treated the cut banks as the river banks and carried their surveys to those banks, but not beyond. Patents were issued for practically all the land. Individuals freely sought and dealt with it as upland. . . Through the long period covered by this course of action there never was any suggestion that this valley land was part of the river bed, nor that the shifting elevations of sand within the sand bed were the river's banks, nor that the land on the south side belonged to the United States. Not until some land on the south side and part of the river bed were discovered to be valuable for oil was this unbroken course of action and opinion drawn in question. However much the oil discovery may affect values, it has no bearing on the questions of boundary and title.
>
> Our conclusion is that the cut bank along the southerly side of the sand bed constitutes the south bank of the river and that the boundary is on and along that bank at the mean level of the water when it washes the bank without overflowing it.

The remainder of the opinion decides various contentions as to changes in the boundary, thus defined, by reason of erosion and accretion.

Mr. Justice McReynolds delivered a dissenting opinion. He did not think that the treaty should be construed to give a right of navigation on the river and then place a strip of alien land between the recipient and the river. Again, he pointed out that if the southern bank were to be taken as the boundary, there would be no need for the clause expressly reserving islands in the river to the United States. But the principal reason why the learned Justice was constrained to disagree, he expressed in part as follows:

> That the Spanish government wittingly assented to a boundary by which a narrow strip of foreign territory was interposed between its citizens and waters essential to their welfare seems highly improbable. The convenience of the population must have been in contemplation. Nor do I find adequate reason for thinking that the United States desired this strip of barren land—then without value to their citizens—with the consequent obligations and serious difficulties. In 1819 troublesome problems incident to marking the boundary between this country and Canada were pending. Considering them, it is easy to understand why the United States desired to fix the boundary at the low water mark of Red River, reserving the islands to themselves. But, obviously, ownership of the barren strip south of that line would entail unfortunate consequences to them and interfere with the orderly development of Spanish territory. Surely, neither government expected such a result.

The case was argued by Mr. S. P. Freeling, Attorney General of Oklahoma, for Oklahoma, by Mr. W. A. Keeling, Attorney General of Texas, and Mr. Thomas W. Gregory, for Texas, by Mr. W. W. Dyar for the United States, and by Mr. Joseph W. Bailey for the Texas Patented Land Owners.

Patent Validity and Infringement-Reissues*

The practice of reissuing letters patent with broader claims than those covered by the original patent, condemned.

The adaptation of kerfs and spurs, old in the metal working art, to concrete construction does not amount to invention.

George E. Vandenburgh v. *Truscon Steel Company*, Adv. Ops. 362, Sup. Ct. Rep.

Petitioner brought his bill in equity praying an injunction and accounting for infringement of his patent No. 841,741 reissued to him as reissue patent No. 14,182. The patent related to the art of re-enforcing concrete by providing a re-enforcing bar with spirally disposed coils secured to the bar

*NOTE: The review of the three decisions on patent cases in this issue was written by Mr. Wallace R. Lane, President of the American Patent Law Association.

to provide an extended area of contact. The patentee so arranged his bar and opposing spirals as to apply the truss principle to the strengthening of the beam and to give it the tensional resistance along the lower part of the beam and against the diagonal tension near the ends of the beam.

Defendant employed a rectangular cut in the edge of the T spacer or upright and retained the spiral rod in it by peening or hammering down the edges of the cut so as to keep the rod from slipping out. Others had adopted a similar form of engagement. Observing this, the patentee who had not used or exploited his original patent in any way, secured a reissue of his patent in which he was permitted to broaden his 1st and 2nd claims.

The trial court held claims 1, 2, and 3 invalid for lack of invention and dismissed the bill, and the Circuit Court of Appeals for the Sixth Circuit affirmed the action of the trial court. If valid, the Appellate Court found claim 3 must be so narrowly construed that defendant did not infringe.

In the Second Circuit Judge Hough, sitting in the District Court, found that claim 3 must be so narrowly construed that defendant's device did not infringe. The Circuit Court of Appeals for the Second Circuit sustained the 3rd claim and found infringement.

In the Third Circuit, Judge Orr, found claim 3 invalid for lack of invention, and the Circuit Court of Appeals for the Third Circuit sustained the decree of dismissal, but on the ground of non-infringement. Writ of certiorari was granted because of divergency of opinions. On the question of the reissue, all of the courts held the claims of the reissue patents void and to give patentee no right to claim infringement in the collapsible features of the column hooping.

The CHIEF JUSTICE delivered the opinion of the court. On the proposition that the patentee broadened his claims on the reissue patent, the learned Chief Justice said:

> His making his form of engagement loose, was an afterthought to catch makers who had not been advised in his specifications that there was anything collapsible in his truss formation. . . . It is clear to us that Vandenburgh having secured a patent for a truss form of reenforcement and finding it unworkable, for it never has been adopted in the trade or in any structure, is through reissue seeking to expand the paper combination he claims into a field in which it does not belong.

The patentee claimed that he was the first to introduce into the field of concrete re-enforcing the kerf and integral spur to clamp the spiral rod,—that this involved invention, and that claim 3 should be construed to secure him a reward. In denying invention the opinion states:

> It may be true that in the field of re-enforcing concrete the kerf and spur had not been used before as Vandenburg used it, but the kerf and spur were old in the art of kindred fields. They were old in metal working art. Exactly the equivalent is shown in sand screens for mixing the materials of concrete and in sustaining fence wires. It is difficult to differentiate the field of metal working from this art of re-enforcing concrete because the problem was only one of spacing firmly the convolutions of the metal spiral and that was a well known device for such a need.

The case was argued by Messrs. O. Ellery Edwards and Carlos P. Griffin for petitioners and by Mr. F. W. Guthrie for respondent.

Patents,—Validity and Infringement

General adoption and successful use of the patented device is weighty evidence to sustain a presumption of validity.

A patent is not too vague where it is shown that others applied the invention from the specifications.

Eibel Process Company v. *Minnesota & Ontario Paper Company,* Adv. Ops. 374, Sup. Ct. Rep.

Petitioner brought suit against respondent for infringement of a patent and seeking an injunction, and accounting. The patent was for an improvement for Fourdrinier machines for making paper and had for its object a machine which might be run at a very much higher speed than heretofore and to produce a more uniform sheet of paper. Respondent denied validity of the patent and infringement.

The patent was held void by the District Court in the Western District of New York. On appeal to the Circuit Court of Appeals for the Second Circuit, the decree of dismisal of the District Court was reversed, and the patent was sustained, and found infringed. The trial court in the instant case found the patent valid and entered a decree for injunction and for damages. On appeal the Circuit Court of Appeals for the First Circuit reversed the decree and directed the dismissal of the bill. Because of the conflict in the two circuits, certiorari was granted to review the latter decree, and the Supreme Court reversed the decree of the Circuit Court of Appeals.

The improvement was on the Fourdrinier machine which had been widely used in making news print paper. Some of the Fourdrinier machines weigh more than a million pounds and their cost ranges as high as one hundred and twenty-five thousand dollars. They are run night and day in order that the capital invested in them may yield a proper return. Before the patentee entered the field continued high speeds in the wire of the Fourdrinier machine beyond five hundred feet a minute resulted in defective paper. The patentee concluded this was due to the disturbance and ripples in stock as it was forming at a point along the wire and caused by the fact that at that point the wire was traveling much faster than the stock, and that if at that point the speed of the flowing stock could be increased approximately to the speed of the wire, the disturbance and rippling in the stock would cease. Accordingly he proposed to add to the former speed of the stock by substantially tilting up the wire and giving the stock the added force of the down hill flow.

The CHIEF JUSTICE delivered the opinion of the Court. The first question considered was whether patentee's discovery and construction was a real discovery of merit. The record showed that after the introduction of the patented device the departure was so startling and surprising that the paper making trade hesitated to adopt it but that within a short interval most of the FIRST machines adopted the patented invention. This fact had a decided bearing on the question of validity. The opinion states:

> The fact that the Eibel pitch has thus been generally adopted in the paper making business and that the daily product in paper making has thus been increased at

(*Continued on page 240*)

PUNCTUATION IN THE LAW

Use of "Points" is a Matter of Prime Importance in Drafting of Statutes and Preparation of Important Legal Documents—Attitude of Courts on the Subject—Some Practical Suggestions Offered to the Lawyer

By URBAN A. LAVERY
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ONE of the most famous maxims of the law—"De minimis non curat Lex"—is to the effect that the law does not concern itself with trifles. For the average lawyer punctuation is purely a "de minimis" matter, a trifle to which he gives no concern. Such indeed was the view of the writer of this paper before his experience as Legislative Draftsman for the late Illinois Constitutional Convention taught him otherwise. In that work two points were brought home to him; first that punctuation has considerable importance for the practicing lawyer and second that it is possible to offer some practical suggestions as to its usage. There are two main fields of legal work where questions of punctuation are of prime importance—in the drafting of legislation which is frequently the job of the practicing lawyer and in the preparation of the important legal documents which are constantly presented to him. Something will be said in this paper about the subject of punctuation as it is presented in each of these fields.

Before coming to a discussion of what to do and what not to do, there are certain preliminary points which should be mentioned. In the first place it must be remembered always that what is good punctuation in other writing is usually over-punctuation from the lawyer's point of view. A good illustration of this difference occurred in the work of the Illinois Constitutional Convention just referred to. That body gave much more than usual consideration to matters of draftsmanship and the subject of punctuation received careful and thoughtful attention. After the final draft of the document had been prepared and a fixed policy of reducing punctuation to a minimum had been adopted the draft was sent for criticism as to style and form to a well known professor of English in a leading university. That expert on style made scarcely any corrections as to the wording of the draft but he inserted a multitude of "points" (the technical name for punctuation marks), especially of commas. Practically every point which he inserted, however, was removed before the document was engrossed. Those in charge of the actual drafting of the document had many a good laugh about "the barrel of commas for sale," when the extra points were removed. Yet the English professor was entirely right from his point of view. He was schooled in a tradition which held and taught the so-called *close* style of punctuation, while every good lawyer adheres rigidly to the *open* style.[1]

Another preliminary point is the mental attitude of lawyers toward punctuation, a matter already mentioned. They consider punctuation as a subject not worthy of much notice. Usually it is left to the temperamental mercies of the stenographer. But just here are certain psychological factors which should not be overlooked. In the first place the using of punctuation is essentially feminine. That is, instead of a rugged and bold reliance on words to convey meaning, which would be the masculine way of doing things, the habit has grown up of dressing up a sentence with the lace and ruffles of punctuation. It is well known that women authors and letter writers use more punctuation than men; and most law stenographers are women. In the second place most stenographers, whether men or women, are likely to be over-impressed with the necessity of using such things as points, underscoring of words and capital letters; considering them like spice in food of which, for critical tastes, the more used the better. The result is that an excessive use of commas (the so-called "comma fault") is a frequent thing in legal documents.

Coming now to the first of our main topics, it is easy to prove that in drafting laws the matter of punctuation cannot be ignored. In a recent dispatch from Washington, D. C., the papers carried a headline—"Missing Comma Causes Trouble"—and then proceeded to tell how:

> Misplacement of a comma in the text of the war risk insurance act took away from thousands of officers and men in the coast guard all the benefits of that act after Aug. 28, 1919, in the opinion of officials of that service who appeared today before the house interstate commerce committee to ask that the coast guard be again placed on equality with the army and navy.

That is perhaps "hearsay' testimony and will be excluded by lawyers although the rest of mankind like Mr. Dooley are inclined to say, "I see by the papers," and believe a large part of what they read. Another instance therefore will be given which every lawyer must accept as authentic. The legislature of Illinois at its session of 1872 passed an act giving judges certain increased powers in vacation, the act providing among other things—

> The several judges . . . shall have power, in vacation, to hear and determine motions to dissolve injunctions, stay or quash proceedings, etc.[2]

In 1874 the legislature passed the so-called Revised Laws of Illinois which purported to codify the existing statutes and in the revision of the sentence just quoted a comma was somehow inserted after the word "motions." The complete change in meaning thereby affected is obvious and the story of what happened as a result of that blunder is worth telling. An energetic country lawyer saw in that extra comma an opportunity to get a big fee by the "shoe string" route. He arranged with a client of his by the name of Hammock to have the latter purchase two judgments, both of which aggregated less than

1. Webster's New International Dictionary in defining punctuation says: "Punctuation is *close* when the points, especially commas, are used profusely, and wherever clearness and precision are the first requisite, as in this dictionary, it is *open*, as in prevalent English literary usage, when points are omitted wherever possible without ambiguity." This sentence is over-punctuated from a lawyer's point of view.

2. Ill. Laws 1871-2, p. 504, Sec. 1.

$1,000, against a local railroad. The lawyer thereupon went before a judge of the Circuit Court of Perry County in vacation time and asked for a receiver of the corporation and without notice to the company the court appointed a receiver for the road and fixed the receiver's bond at the small sum of $15,000.00. As might be expected the receiver at once qualified and proceeded to take possession. A few days later the Farmers Loan and Trust Company of New York filed a bill in the Federal court for the Southern District of Illinois praying foreclosure of a trust deed on the railroad amounting to about one million dollars principal and interest. The suit was started without knowledge of the suit in the state court and the Federal court appointed its receiver who was instructed to take immediate possession. Out of that set of facts grew the famous case of Hammock v. Farmers Loan and Trust Co.[3] in which the Supreme Court of the United States held that the extra comma would be ignored and that as a result the state court was without jurisdiction and all its proceedings void. The Supreme Court laid down the rule that punctuation in statutes had no meaning which the courts were bound to respect. Indeed the court said in so many words, "Punctuation is no part of a Statute." In reaching its decision the court relied largely on a earlier case in which the Supreme Court had said:

> Punctuation is a most fallible standard by which to interpret a writing; it may be resorted to when other means fail; but the court will first take the instrument by its four corners in order to ascertain its true meaning.[4]

A few courts in this country, as will be shown hereafter, have adopted a somewhat contrary rule but the great weight of authority both in this country and in England supports the rule laid down in the two cases just referred to. The reasons why courts give scant attention to punctuation in laws are so plain as to appeal at once to the reason even of a lay person. The first reason lies in the manner in which laws are "passed" in all English speaking legislative bodies. By the traditional practice laws are passed on three "readings" and are always said to be "passed as read." It is generally left to a clerk with a droning voice to read the bill and there is no way by which the punctuation can be "read" in the same manner as the words. The punctuation therefore is simply not before the house. Another reason arises from the fact that amendments are always being made from the floor "to be inserted after the word blank and before the word blank," thereby destroying the principles of punctuation that may have been correctly inserted in the original bill. Finally a little experience with legislative bodies as a spectator teaches that the members give scant attention to such things as punctuation; it is the words alone that interest them. It is clear therefore that in drafting laws punctuation points should be reduced to a minimum. In England, where statutes are drafted with so much more care and attention to technique than here, all such details as punctuation, section structure and paragraph arrangement are carefully considered and punctuation sharply restricted.

Text writers who have discussed the drafting of laws agree with the rule as established by our Supreme Court. A modern English authority says:

> PUNCTUATION. In Stephenson vs. Taylor (1861), 1. B. & S. 101-106, Cockburn, C. J. says: "On the Parliament Roll there is no punctuation and we therefore are not bound by that in the printed copies." This statement seems to be also applicable to the vellum prints. The copies printed on vellum since 1850 are certainly in some cases punctuated but punctuation is discouraged by the parliamentary officials owing to the difficulties which arise when the punctuation is not altered to give effect to amendments made in committee.[5]

Sutherland in his well known work on Statutory Construction is to the same effect. That author also explains that the early English statutes had no punctuation whatever and lays down the modern rule by saying: "As a rule punctuation is entitled to little weight."[6] This matter is well summed up by a leading American authority who says:

> The British statutes on the original Rolls of Parliament are not punctuated at all and although more or less commas or punctuation appear in the printed transcript of the Acts of Parliament they are not inserted by authority and are not regarded as an essential part of the law. In the legislative bodies of this country punctuation marks are usually inserted with greater or less approach to correctness by the member who drafts and introduces the bill, are sometimes changed by the engrossing clerks and are frequently reformed by the printer. They seldom receive the attentive consideration of the legislator and no great importance is ever attached to them during the progress of the bill through the house. For this reason it has come to be recognized as a settled doctrine that punctuation marks are no part of a statute.[7]

It is true a different rule from that laid down by the Supreme Court of the United States seems to prevail in New York. But the changed rule there is due to the fact that the constitution of that state, article III, section 15, provides that statutes are to be enacted "as printed and read" instead of "as read," which is the general rule. Accordingly the New York courts have held in a number of cases that punctuation is a part of a statute.[8] Maine and Louisiana seem to follow a similar doctrine.[9] This minority rule, however, is not likely to be extended beyond the states mentioned.

It was for the reasons here suggested that the proposed Illinois Constitution was drafted with the least possible punctuation, the report of the drafting committee having concluded as follows on this point:

> The great weight of authority—as shown by the citations given in Sutherland and Black and as further shown by the position of the Supreme Court of the United States—holds that punctuation in a statute or constitution is to be given little weight or effect.

The matter of punctuation in drafting statutes is really in a state of flux, there being no settled policy on the point. If this paper in some degree calls attention to the haphazard methods of punctuation still in vogue in drafting laws it will have been worth while.

But punctuation is also an important factor in the every-day business of the lawyer as will now be shown. Here likewise there are no settled rules or principles which lawyers adopt, although there is serious need for just that thing. The practice in regard to punctuation usage has swayed from one extreme to another and is now (with good lawyers)

3. 105 U. S. 77, decided in 1881. This case is best known for establishing the rule that a real estate mortgage on a railroad carries with it the chattel property even against a later chattel mortgage.
4. Ewing v. Burnett, 11 Peters 41, decided in 1837.
5. Craise, Statute Laws, 4th Ed., London, 1907.
6. Lewis Sutherland, Statutory Construction, 2nd Ed., Sec. 361.
7. Black, Interpretation of Laws, p. 152.
8. See Tyrrell v. New York, 159 N. Y. 239, 53 N. E. 111 and cases there cited.
9. See Blood v. Beale (Me.) 60 At. 427, and State v. Des Forges (La.) 17 So. 811,

going back toward the earlier custom. A century ago it was the common practice to omit all points from a deed or other instrument because it was considered dangerous to insert them.[10] It is said the practice of omitting all points from trust deeds was prevalent up to a few years ago with some of the largest banks in Boston and there are good draftsmen, although they are much in the minority, who still observe that rule. Most lawyers, however, are reckless in their use of points and as a result the books are full of cases which turn on nothing but questions of punctuation. In Bouvier's Law Dictionary, in Corpus Juris and in fact in every law digest, there will be found many cases which involve nothing but careless attention to punctuation in the preparation of legal documents. In one of the latest compilations of leading cases there appears an extended note on "Punctuation as affecting Construction of Contracts" in which more than thirty important cases are digested and many other cases cited.[11] The cases there discussed are commended to the many doubting Thomases who will no doubt disagree with what is here said.

Only a few illustrations can be given here, but any one who is interested will be surprised at the number of cases in the reports involving careless punctuation. In a recent case in California the Supreme Court had before it a promissory note, the pertinent part of which read:

> The sum of $1000 on or before October 27, 1912, with interest at the rate of 7% per annum, payable at maturity; the sum of $2000 on or before one year; the sum of $2000 on or before two years; the sum of $2200 on or before three years with interest at the rate of 7% per annum payable semiannually.[12]

The maker of the note refused to pay interest on the second and third installments on the ground that the note did not provide for interest except on the first and fourth installments. The trial court, however, allowed interest on the entire amount of the note on the ground that the punctuation of the note was an oversight and that the semicolons should be ignored. The debtor took the case to the Supreme Court but that body not only affirmed the trial court but assessed costs against him for prosecuting a frivolous appeal.

An interesting case arose in Maryland a few years ago which shows the subtlety of this subject and proves how difficult it really is. A young lady who was about to be married and who was possessed of a considerable estate gave $50,000 of her property to a trust company in Baltimore with instructions to pay her the income during her life. The agreement with the trust company provided that after her death the money in question should be paid to such persons as she might—

> by last will and testament, or by instrument in the nature of a will executed in the presence of two witnesses, limit, nominate and appoint.[13]

She died in Switzerland after making a holographic will which was good in Switzerland, and therefore, under the laws of Maryland good in that state. The question was whether the language quoted, notwithstanding the Maryland statute, required (for this fund) that the will should have two witnesses; or did the provision as to two witnesses modify only the clause about "instrument in the nature of a will." The Supreme Court in reversing the trial court held the fund passed under the holographic will and said:

> It is well known that draftsmen of legal instruments frequently ignore all the rules on that subject (punctuation) to which grammarians and rhetoricians attach great importance. The most learned and accomplished lawyers often times pay but little attention to it in their preparation of legal instruments. This may be because the copyist or the writer to whom the paper is dictated has not followed the directions or intonations of the author or it may be because it is known that the cases are few that are determined by punctuation.

If there were any good to be gained from it we could easily make an interesting collection of cases even during recent years where blunders in punctuation produced serious litigation. In 1915 the Supreme Court of Illinois had before it a case involving a deed in which appeared the following clause:

> But if the said John Wilson and Julie Wilson, his wife, should die intestate (with no children), the above, etc.[14]

The draftsman who prepared the deed testified he undertsood the words "intestate" and "with no children" to be synonymous and that he had used the parentheses to show that meaning. The court, however, refused to be bound by such evidence and said:

> The punctuation in this instrument will not be permitted to change the meaning, if, reading the instrument altogether, the meaning is clear.

But the average lawyer is interested in helpful suggestions rather than in a collection of archaic specimens of bad drafting. By way of conclusion, therefore, something will be said in an effort to summarize this subject in a constructive way.

Proposition 1. In the first place it should be remembered, as we have already pointed out, that drafting legal documents or writing laws is one thing, while preparing briefs or writing letters is quite another. In the latter cases the lawyer may rely on the good faith of his reader and on a sympathetic effort to get at the real meaning. Punctuation, therefore, is a simple matter. But in drafting documents the exact opposite is true; for the draftsman must expect bad faith on the part of some readers and must guard against adroit efforts to make the language mean what was never intended. Under such circumstances the draftsman must give exacting attention to punctuation.

Proposition 2. Attention has already been called to the habit of leaving punctuation to the stenographer. That cannot safely be done in drafting instruments although it may work well enough in other matters. The way in which a document is punctuated *or not punctuated*, is an important factor in the impression which it gives, in other words its meaning; and all the factors which contribute to the instrument's meaning should come from the mind of the draftsman.

Proposition 3. The meaning of words *per se* has been reduced pretty much to a science and there will be little doubt, ordinarily, about a writer's meaning on the score of the words themselves. But with punctuation it is very different; the rules on that matter being variable and each writer pretty much a law unto himself. Consequently, since words are exact factors and punctuation a variable factor, the draftsman should always use words

10. In the case of Willis vs. Martin, 4 T. R. 65, 100 Eng. Rep. 896, decided in England in 1790, the court said in inserting punctuation in a marriage settlement: "We know that no stops are even inserted in Acts of Parliament or in deeds."
11. 2 Am. Law Rep. 1060.
12. Stoddart v. Golden, 178 Pac. 704, 3 A. L. R. 1060.
13. Olivet v. Whitworth, 82 Md. 258, 33 At. 733.
14. Wilson v. Wilson, 268 Ill. 270, 109 N. E. 36.

alone to convey his meaning if possible, rather than rely on punctuation.[15]

Proposition 4. Where punctuation is necessary there is ordinarily little difficulty with the period, the colon and the semicolon; the rules governing these points being fairly scientific and pretty well understood. The question mark, the exclamation mark and the points for quotation give little trouble, each of them having, generally, a definite and limited purpose. Moreover, the writer does not usually have the option of using them or not, as he frequently does, say with the comma. The colon it should be said is gradually disappearing from use while the question mark and the exclamation point practically never are used by the draftsman. Of these points therefore the period and the semicolon remain and with a little horse sense they can be used without trouble.

Proposition 5. The parentheses and the dash, especially the latter, seem to be growing in use. For the draftsman the parentheses are of great importance while the dash he should rarely use. The dash is the most feminine of all the points and is the pet of newspaper writers and others seeking primarily an emotional effect. And yet it has its place and value in ordinary writing.[16] In drafting the proposed new Constitution for Illinois the use of the dash was entirely discarded although it appears frequently in the Constitution of 1870 of that State. The parentheses on the contrary were used frequently in the proposed document. They are indispensable to the draftsman for limiting his modifiers to a precise part of a sentence. The experience of the late Illinois Constitutional Convention in the usage of these two points indicates their respective values to the practicing lawyer.

Proposition 6. For the draftsman nearly all the difficult questions of punctuation arise with the use of commas. The difficulty grows out of the fact that this point is used in a great variety of ways and for different purposes. It is used, for example, to mark off the various members of a list, and here its use is simple. But it is used also by many writers *to convey meaning* which no other point does. That is, the comma is frequently used to give a phrase or part of a sentence one meaning rather than another. We may illustrate the point by a well known grammatical pun. Thus the sentence—"Woman, without her, man would be a savage," and the same sentence—"Woman, without her man, would be a savage"—have almost opposite meanings due to the shifting of a comma.

All modern texts advise against the use of commas except where they are absolutely necessary. That is a safe rule for the lawyer to follow. The rules about comma usage are most complicated and we cannot detail them here. The draftsman who tries it will be surprised to find that in nearly every instance the comma can be dispensed with by rearrangement of the sentence. Certainly if sentences are kept short all *doubtful* or *dangerous* uses of the comma can be avoided. Looking at the shoals of commas that commonly disfigure legal instruments, it is no wonder the draftsman gets into trouble. Indeed as a breeder of litigation commas may be compared to the countless wigglers that in our youth we watched coming up to breathe in the family rain-barrel. It was only in recent years that the medical profession taught us that mosquitos carried disease and the rain-barrel and all its relations were abolished as a pest. So it is with the comma. Like the mosquito it is a little thing but like the mosquito also it is potent for trouble beyond its size. To carry the simile one step further it should (from the point of view of the draftsman) be abolished—almost.

And so in the end we come back to where we started out. "De minimis non curat lex" is an excellent gospel for the lawyer to follow. But the trouble is one cannot always say what are the little things. In the art of writing, just as in every other art, it is the details, the lights and shadows of the picture, the shades of meaning in a sentence, which mark the work of the true artist from that of the fumbler. It would be easy indeed to overemphasize the importance of punctuation to the practicing lawyer and yet it seems fair to say the subject has been underemphasized in the past. If any further justification for this paper is needed, is it not found in the words of the great Quintillian, that master of rhetoric and grammar in the golden age of Rome, who said in justifying his own writings on these "little things":—

> I am however haunted by the thought that some readers will regard what I have said as trivial details, which are only likely to prove a hindrance to those who are intent upon a greater task. And I myself do not think we should go so far as to lose our sleep of nights or quibble like fools over such minutiae; for such studies make mincemeat of the mind. But it is only the superfluities that do any harm. I ask you, is Cicero a less great orator for having given these things his diligent attention?

SIGNED ARTICLES

As one object of the AMERICAN BAR ASSOCIATION JOURNAL is to afford a forum for the free expression of members of the bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of this JOURNAL assume no responsibility for the opinions in signed articles, except to the extent of expressing the view, by the fact of publication, that the subject treated is one which merits attention.

15. For a good discussion of this point see "The King's English" (London) 2nd Ed., p. 225. The authors give the real gist of this point when they say:

"Every one should make up his mind not to depend on his stops. They are to be regarded as devices, not for saving him the trouble of putting his words into the order that naturally gives the required meaning, but for saving his reader the moment or two that would sometimes, without them, be necessarily spent on reading the sentence twice over, once to catch the general arrangement, and again for the details. It may almost be said that what reads wrongly if the stops are removed is radically bad; stops are not to alter meaning, but merely to show it up."

16. Beadwell's "Spelling and Punctuation," a well known English work, says of the dash:

"The dash is frequently employed in a very capricious and arbitrary manner, as a substitute for all sorts of points, by writers whose thoughts, although, it may be, sometimes striking and profound, are thrown together without order or dependence; also by some others, who think that they thereby give prominence and emphasis to expressions which in themselves are very commonplace, and would, without this fictitious assistance, escape the observation of the reader, or be deemed by him hardly worthy of notice."

CURRENT LEGAL LITERATURE

A Department Devoted to Recent Books in Law and Neighboring Fields and to Brief Mention of Interesting and Significant Contributions Appearing in Current Legal Periodicals

I. Among Recent Books

THE Law of Sales, by James B. Read, Assistant Professor of Business Administration, University of Wisconsin. D. Appleton & Co., New York. $2.00. Prof. Read edited and prepared for the press *The Law of Commercial Paper,* by Prof. Underhill Moore, of Columbia University. The new volume is apparently designed as a companion volume to that on Commercial Paper, and as an elementary statement of the law, occupying but 225 pages, it has its uses. The discussion is under accepted headings of classification with little, if anything, new in terminology or analysis.

Federal Income Tax, by George E. Holmes, of the New York Bar. The Bobbs-Merrill Co., Indianapolis. $10.00. This volume is a revision of the 1922 edition necessitated by the enactment of the new Income Tax Law, and runs to almost 2,000 pages. It includes the law with reference to Federal taxation of war profits, excess profits, stamp, and capital stock, and contains an analysis of all the rulings and opinions in the decisions of the courts and bulletins of administrative officers concerned with Federal taxation. New editions of this book have appeared annually since 1920.

Income Tax Procedure, by Robert H. Montgomery, C. P. A. The Ronald Press Co., New York. $10.00. This book also is a current revision of the 1922 edition, equal in size to the book just mentioned. Its outstanding utility to the lawyer consists in the facts that it has been prepared by an accountant of recognized ability, assisted by other able accountants and lawyers, and that the author has no hesitancy in attacking the validity of Treasury rulings, justifying this by quoting in the preface Secretary Mellon's report, showing more than half the claims for reduction in taxes for the year ending June 30th, 1922, aggregating $330,000,000, to have been allowed.

Politics, by Frank Exline. E. P. Dutton & Co., New York. $2.00. The following from the title page of this volume discloses its undertaking: "An original investigation into the essential elements and inherent defects, common to all present forms of government, together with a proposal for a political system, which will automatically produce the best government possible in any community." In a most readable and interesting fashion the author describes our present difficulties and proposes a solution which students of the history of philosophy will probably recognize as a revival of the theory of "natural law." For an appreciation of the defects of modern forms of government and of the content of the "natural law of philosophy" this is a valuable book worth a careful reading.

America's Race Heritage, by Clinton S. Burr. National Historical Society, New York. $4.20. This book is recommended as an introduction to the study of the racial problems confronting the people of the United States, and its reading will lead many to further consideration of the subject of anthropology in this connection, regardless of whether they agree with all the conclusions reached by the author.

America, A Family Matter, by Charles W. Gould. Charles Scribner's Sons, New York. $3.00. The author searches for the causes leading to the decline in human intelligence found in the 8th century, and considers the extent to which each is present in the current life of America. It ends with an argument for the repeal of our naturalization laws, and the barring from this country of "the feeble minded, the vicious and the debased."

The New Social Order, by Harry F. Ward, Professor of Christian Ethics, Union Theological Seminary, New York. The MacMillan Company, New York. $1.50. An able student of Christian ethics here considers in a thoughtful and scholarly fashion the results of the clash between the "economic pressure and idealistic impulse," producing a book of challenging interest and of more than passing value.

The Decay of Capitalistic Civilization, by Sidney and Beatrice Webb. Harcourt-Brace & Co., New York. $1.75. The writers of this book, well known for their work in the field of the history of the labor movement, concede that the present organization of production achieved an initial success, which reached its height about the middle of the 19th century. They then undertake to marshal the evidence to show that from the standpoint of productive efficiency, as well as from the standpoint of its effects upon human values, this organization has since shown a steady decline.

Social Change: With Respect to Culture and Original Nature, by William F. Ogburn, Professor of Sociology, Barnard College. B. W. Huebsch, Inc., New York. $2.00. The following is taken from a statement by the publishers: "Professor Ogburn defines the difference between cultural factors and biological factors in determining the course of social evolution. The cultural factor in evolution refers to the environment which man has created himself, laws, customs, inventions, etc. The biological factor deals with the animal characteristics of man that he is born with but which, Professor Ogburn shows, have hardly changed in all the ages. In separating these factors and dealing fully with those cultural facts that the average man is interested in *"Social Change* has done a great service in making sociology intelligible to the average man without making it 'popular' in the derogatory sense of the term."

The Russian Immigrant, by Jerome Davis, Assistant Professor of Sociology, Darthmouth College. The MacMillan Company, New York. $1.50. Of this book Jane Addams said: "Those of us who in any way are trying to understand and to relieve the hard lot of the newly arrived immigrant are placed under permanent obligation to Dr. Jerome Davis for his careful and sympathetic study. The people involved grow constantly more human and vivid."

The Negro in Chicago, University of Chicago Press, Chicago. $6.00. This book is the report of the Chicago Commission on Race Relations, a representative body of both whites and negroes, dealing with the Chicago race riot of July, 1919. It contains an extended study of the living conditions among the colored people of

the North, and a detailed statement of the Commission's conclusions concerning the adjustments necessary to prevent the recurrence of racial outbreaks.

Facing Reality, by Esme Wingfield-Stratford, Ex-Fellow King's College, Cambridge. George H. Doran Co., New York. $2.50. Here are set out the evils attending our failure to increase our wisdom apace with our advance in mechanical power during the last century and a half. An inkling of the book's nature is found in these sentences from the introduction: "The hope of appreciating or facing reality is frustrated by reason being made a slave to will. Our judgment, our vision are distorted by passion, positively by our desire to see things as we would have them, negatively by our distaste for taking more mental trouble than we can help. The results of this turning away from the truth are traced in creative art, in politics, in the social system and finally in religion."

The Psychology of Society, by Morris Ginsberg, Lecturer in Philosophy, University College, London. E. P. Dutton & Co., New York. $2.50. Affiliated with those championing the new social psychology, the author of this little text studies social structure and function in terms of instinct tying back to that discussion a consideration of the nature of human will and reason in relations to group instincts and impulses.

The Theory of Ethics, by Arthur Kenyon Rogers. The MacMillan Company, New York. $1.50. This volume is an interesting and valuable discussion of the nature of ethical experiences from the standpoint of empiricism, rather than metaphysics. "In view of the fact that I disagree with his conclusions on every point, I should like to acknowledge special obligation to the ethical writing of G. E. Moore," says the preface. H. O.

A Treatise on Pleading and Practice in New York, including Particular Actions and Special Proceedings with Forms, by Francis X. Carmody. Clark Boardman Co., Ltd. New York, $15.00. Mr. Carmody's work is one of the first authoritative books based upon the Civil Practice Act of New York covering the whole subject of pleading and practice including such new and important phases as Declaratory Judgments and the recent Arbitration Law. The author, by constant and systematic discussion and comparison, emphasizes those phases of procedure wherein the law of the Code has been retained and those in which the Civil Practice Act has made substantial changes.

The chief merit of the work is that it presents in organized, coherent and scholarly fashion this comparative review of Civil Practice in New York. The treatment is not sketchy, disconnected or commentary —as is the case in so many works now published on Civil Practice—but systematic and thorough.

Mr. Carmody's order of treatment is interesting. He recognizes no clean-cut distinction between Pleading and Practice, but develops his subject chronologically, taking up each step of the action as it would occur in point of time in the conduct of a litigation. The student who reads the book is introduced to his subject exactly as he would be in actual practice. The discussion of the subject at any point is no more advanced in terminology than the stage of progress which the author believes the reader has made in the subject before him.

The work commends itself to students, to teachers, and to practitioners in the law. The author's experience of more than twenty years as a teacher of the law, in addition to an even longer period as a practitioner before the bar is clearly evidenced in the quality of the text.

The book would seem to have more than local value. Other states should benefit by the experience of New York in adopting a new Civil Practice Act as they have done in the past in patterning their practice on the Code of Civil Procedure.

There is no other work at present extant which in the compass of one volume so satisfactorily covers the conduct of litigation under the Civil Practice Act both from the point of view of the practitioner and those interested in the scientific development of the law. JAY LEO ROTHSCHILD.

New York City.

II. Current Law Journals

MANY thoughtful writers are turning their attention to the growing tendency of popular opinion to become restive under the restraints imposed by the Constitution and its interpretations by the Supreme Court, and to the demand for their removal by amendment and in other ways. Under the title *"Constitution Conservation,"* Charles Kerr, in Virginia Law Review for March, points out the dangers of entering upon "a general program of Constitutional reformation." He also finds grounds for concern in the "apparent inclination to hold that great instrument, if not with irreverence, or lack of respect, at least with feelings of unconcern," and in the "drifting tendency toward popular interpretations, on the part of the lawmakers particularly," which is "step by step turning a representative government into one of government by commission."

Judge Lawrence T. Harris, of the Supreme Court of Oregon, has an admirable article in Oregon Law Review for March, entitled *"Guardians of the Constitution,"* in which he justifies the power of the Supreme Court to declare legislation unconstitutional.

The Ohio Law Bulletin and Reporter for March 19, 1923, has an interesting article by Archibald H. Throckmorton. In discussing the *"Growth and Development of the Police Power"* Mr. Throckmorton says: "The giant American democracy from time to time becomes restive under its self-imposed bonds, and in its recurrent periods of self-assertion, these bonds must either expand or break. Under such circumstances, it is the English and American habit to yield. And we may, therefore, confidently expect from the Supreme Court of the United States an interpretation and application of the Constitution of the United States along sanely progressive lines that will permit an expansion of the police power in accordance with the development of ideas as to the public welfare, without any abandonment of constitutional guaranties of liberty and property in essential particulars."

"The Growth of National Power," through "(a) the broad judicial construction of the Constitution of

the United States; (b) the amendment of the United States Constitution, and (c) the more complete exercise of its authority by the nation," is discussed by Walter F. Dodd, of Chicago, in Yale Law Journal for March. Mr. Dodd states that not until recently has this increase "endangered the efficiency of the national government and the existence of the federal system," and discusses current instances most interestingly.

In Harvard Law Review for March, Prof. Edward S. Corwin, Princeton University, has a most excellent discussion of *"The Spending Power of Congress —Apropos the Maternity Act."*

Prof. Léon Duguit, Dean of the Faculty of Law at the University of Bordeaux, who has recently made several important contributions to our current legal literature, discusses *"The Concept of Public Service,"* which he finds to be supplanting the "idea of sovereignty" in modern public law, in the March issue of Yale Law Journal.

University of Pennsylvania Law Review for March contains a carefully considered and constructive article on *"Dissenting Opinions,"* by Alex. Simpson, Jr., Justice of the Supreme Court of Pennsylvania.

Prof. Richard R. B. Powell, Columbia University, makes a critical examination of the English and American authorities upon the subject *"Determinable Fees"* in Columbia Law Review for March. He controverts the position taken by some eminent writers that determinable fees cannot exist since the Statute *Quia Emptores,* and finds that "the judicial expressions of England and the United States are according a constantly increasing recognition and definition of that legal relation." The title *"Confusion"* indicates the subject matter of an article by Earl C. Arnold, University of Cincinnati, which appears in the same journal.

In the March number of Harvard Law Review, Prof. Edward H. Warren, Harvard Law School, contributes an instructive article upon *"Safeguarding the Creditors of Corporations,"* in which inquiry is made as to the source of safeguards "provided by law for the protection of the creditors of corporations in addition to the safeguards for the creditors of individuals."

Manfred W. Erich has an interesting and suggestive article in Yale Law Journal for March under the title "Unnecessary Difficulties of Proof." He points out that "if transactions as habitually carried on in the business world cannot readily be proved in court, our judicial system must be deemed a failure," and argues convincingly for the abandonment of unnecessary or ineffective safeguards, which, though "logical enough from an academic point of view often lead in practice to the exclusion of genuine evidence because of the death or disappearance of witnesses or because of the difficulty, delay or expense involved in following the prescribed methods of proof."

"The Juristic Philosophy of Justice Holmes" is the title of a learned article by John C. H. Wu, University of Berlin, in Michigan Law Review for March. In the same journal Leon Green, University of Texas, presents a helpful discussion and classification of cases upon the subject *"Landowner v. Intruder; Intruder v. Landowner. Basis of Responsibility in Tort."*

In the March number of Virginia Law Review, W. B. Swaney, Chairman of the Special Committee on Law Enforcement of the American Bar Association, presents a brief recapitulation of the report of the committee, together with recommendations proposed by himself for divorcing the judiciary from politics, which he believes to be the only way to ever have an ideal system of law enforcement in the States. The article is entitled *"The State Judiciary and Law Enforcement,"* and merits careful study.

The March number of The Annals of the American Academy of Political Science is devoted to the study of *The Direct Primary.* Nineteen articles by men of note discuss the subject from all angles, and a digest of Primary Election Laws is appended.

"Automobile Theft Insurance" by C. P. Berry, appearing in Central Law Journal for March 20, 1923, presents a collection and discussion of the cases relating to the topics indicated by the title.

In the March issue of the Journal attention was called to the publication *American Maritime Cases.* The editors are Emory H. Niles and Arnold W. Knauth, and the office of the publication is 206 E. Lexington St., Baltimore, Md.

ROBERT H. FREEMAN.
School of Law, University of Maryland.

Simplified Law and Interested Laymen

"Some recent *causes celebres* in the criminal courts have shown once again with what intensity of interest certain sections of the public follow every, even the minutest, detail, of the evidence given in those cases. The newspaper accounts of sensational trials are studied with a passion that might be more wisely directed, while the *queues* that have recently besieged the doors of the Old Bailey to get a glimpse of those in the dock and to gloat over with an intense avidity every scrap of evidence, speak eloquently of the morbidity of taste of those crowds who seem to have an abundance of time for this somewhat grim species of entertainment. Less often do we hear of those who, although having no personal or professional interest in the results of legal proceedings, study the reports of decisions in ordinary commercial and other actions as an intellectual exercise. Yet it appears that there are such people, although we fear they are not very numerous. . . . That laymen are able to enjoy the reports of our legal tribunals is another testimony to the fact that these pronouncements are nowadays comparatively free from those technicalities which at one time militated against the intelligibility of reports by others than those of the Profession."—The Law Times, (Jan. 20).

Further Feminine Complications

"We publish this week in another column an interesting communication from a correspondent dealing with the situation that has arisen owing to women barristers applying for election to various messes. It is perfectly clear that every barrister has a right of audience in any of the King's Courts, and we agree with our correspondent that the zealous supporters of the present system are not well advised in opposing the admission of women to the mess. No doubt the mess was primarily a social club, but, as a matter of fact, the mess is the disciplinary body controlling the members of the Bar attending a particular circuit, and it is good for the Bar that every fit and proper person practicing on a circuit should be a member of the mess. We think it may safely be left to the women barristers to see that the social amenities of the mess are not interfered with or destroyed."—The Law Times (Feb. 24).

AMERICAN BAR ASSOCIATION
JOVRNAL

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FOUR TO FIVE DECISIONS

Another proposal has recently been made by a Senator of the United States for a limitation on the power of the Supreme Court to perform its most important function.

The Senator repudiates and exposes the fallacies of the proposed amendment to the constitution, that Congress be given the power to re-enact a statute declared unconstitutional and that thereafter the question of its validity shall not be subject to judicial review. But the Senator proposes that in order to prevent statutes being declared void "by a single umpire" the highest tribunal of the nation be prohibited from declaring any act of Congress unconstitutional unless six members of the court concur in the judgment.

Those who make such proposals seem to have lost sight of the fact that there are prohibitions already in force, created and declared by the court of its own initiative at the very beginning of its existence, stronger and more effective than any written law could be.

It is a distinguishing characteristic of our form of government that we have set bounds on the legislative department, and have from the beginning laid down commandments for Congress to observe, as definite and imperative as the ten which Moses brought down from the mountain and delivered to the children of Israel.

To the judicial branch of our government the duty has fallen to declare that any law which transgresses one of these "thou shalt not" clauses of the constitution, or which seeks to exercise a power not given to the central government but reserved to the states themselves, is not a law.

In the discharge of this solemn duty, the judges themselves have enunciated rules for the prevention of any ill considered interference with the legislative prerogative.

In the Dartmouth College case (4 Wheat. 518) Chief Justice Marshall said, "On more than one occasion this court has expressed the cautious circumspection with which it approaches the consideration of such questions and has declared that in no doubtful case would it pronounce a legislative act to be contrary to the constitution."

In re Garland (4 Wall. 333) he said, "The incompatibility of a statute with the constitution should be so clear as to leave little room for doubt before it is pronounced to be invalid."

Mr. Justice Washington, in Ogden v. Saunders (12 Wheat. 213) said, "The acts of the legislature are presumed to be valid and the courts should not declare them unconstitutional until their violation of the constitution is shown beyond a reasonable doubt.

Chief Justice Waite in the Leaking Fund cases (99 U. S. 700) said, "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt."

These words from the earlier decisions of the Federal Supreme Court have been repeatedly reaffirmed by the court as now constituted. The doctrine still obtains in all its ancient vigor. And not only is it the rule in Federal Courts. The words of Marshall and Washington and Waite have been quoted by the courts of last resort of every state in the Union and thus obtained a power and influence which never would have been given to a federal statute of like purport.

In view of these rules which the judges themselves have sanctioned and promulgated, how unfounded is the alarm of those who clamor about the danger of the powers of government being usurped by the judicial department, and being exercised by a single judge, when the court is divided five to four. The decision is not that of a single judge, it is the decision of five judges moved by a conviction of duty amounting to a certainty and acting from no other motive than to enforce and uphold the constitution as the supreme law of the land.

It has been pointed out by a member of the Boston bar, Mr. F. W. Grinnell, that

withholding any power from a majority is giving it to a minority.

In the discharge of the important duty of assuring to every citizen a remedy by which he may have declared the nullity of legislative acts which would result in the taking of private property for public use without just compensation, the taking of property or liberty without due process of law, the impairment of the obligation of contracts, the infringement of freedom of speech, freedom of the press, religious liberty, ought not the majority rather than the minority rule?

COMPARATIVE LAW BUREAU CONTRIBUTIONS

For several years it has been customary to devote a portion of the April issue of the American Bar Association Journal to the contributions of the Bureau of Comparative Law. In this issue there are rather full reports showing the legislation in Latin-America and also some notes from Europe, Asia and the Philippines.

The legislation for 1922 in Latin America furnishes an interesting approach to an important part of the current history of the peoples. It covers a wide range of subjects and even in the titles of the laws we can see how these nations are struggling with problems familiar to us all. It is impossible here to do more than point out a very few of the details of interest to be found in these contributions.

Argentina and Colombia have both adopted new penal codes which provide, among other things, that there shall be no death penalty. Correct ideas in juvenile reform are shown by a provision in the Argentine Code that minors are to be confined in separate establishments. Consideration for the small offender finds expression in a rule providing that where the term of imprisonment is less than six months reputable women, persons over sixty, and invalids may be detained in their own homes. An unusual provision of the new penal code of this nation makes it a criminal offense to defend or excuse a crime or a criminal in public.

The manner in which Brazil and Great Britain have dealt with the problem of "dual nationality" by means of a treaty is of interest, in view of the complications of that question. The decree of intervention of the Brazilian federal government in the province of Rio de Janeiro, and its assumption of complete authority because of the two conflicting state governments there, show how Latin-America finds it necessary to deal with the problem of localism. Legislation authorizing the establishment of a government bank of issue in Mexico and a similar institution in Colombia shows typical efforts to deal with financial problems. Respect is paid to arbitration in the special convention between Costa Rica and Great Britain for the arbitration of pending questions by the Chief Justice of the United States.

One sees here and there at least the beginnings of important health legislation. As in Colombia for instance, where an effort is made to deal with the mosquito-infection problem by prohibiting various kinds of plantations on which water is likely to collect in pools within a certain distance of habitations. The oil laws of Peru, Mexico and other states, are of course of continuing interest to America. Labor naturally comes in for a fair amount of legislation, but nothing novel seems to have been attempted. Legislation in Costa Rica and in Brazil for encouraging the building of cheap residences shows that this problem remains in Latin-America as well as elsewhere. Public improvements continue to be a matter of prime interest to Latin-American legislators, as far as we can judge from various legislative provisions as to loans.

These references are picked more or less at random from the legislation briefly recorded in this issue, but they are sufficient to show the character and interest of the contributions of the Comparative Law Bureau.

SPEAKERS AT MINNEAPOLIS MEETING

The Committee on Program announces that Secretary of State Charles Evans Hughes has accepted an invitation to address the Association at the Minneapolis meeting. Lord Birkenhead, former Lord Chancellor of England, has also agreed to deliver an address on that occasion, as appears in another part of this issue. The subjects on which they are to speak have not yet been made public, but it may safely be assumed that these addresses will be among the most interesting features of the very interesting program on which the committee is now working.

DECISIVE BATTLES OF CONSTITUTIONAL LAW

III. McCULLOCH vs. STATE OF MARYLAND
(4 Wheat., 316)

By F. DUMONT SMITH
Of the Hutchinson, Kansas, Bar

THIS case, generally known as Bank vs. Maryland, was the most important case financially that up to that time had ever engaged the attention of any court in this country. It involved the whole doctrine of implied powers and the very existence of the Bank of the United States, with its capital of $35,000,000.00, twenty-five branches, and innumerable ramifications, financial and political.

This bank had been the football of politics since the beginning of the government and the center of a continuous conflict. It was Hamilton's pet measure for the stabilization of the finances of the new country. In Washington's cabinet Jefferson bitterly opposed it as unconstitutional. Hamilton's argument prevailed with Washington, and the bank was established in 1791 with a charter to run twenty years. It was profitable from the start, but its stock largely fell into British hands, and that and the growing conviction of the Republicans that it was unconstitutional made it unpopular, and its charter was not renewed.

An orgy of private banking followed which coupled with the War of 1812 left our finances in chaos. Specie payments had been suspended, and the country financially was in a bad way when in 1816 the Bank was re-incorporated and began business on the first day of January, 1817. It had a capital of $35,000,000.00, an enormous sum in those days, of which $7,000,000.00 was held by the government, and five of the directors were appointed by the president. It acted as the fiscal agency of the government, collecting the revenue, disbursing it and transferring funds from one point to another without expense to the government. It issued bills redeemable in specie, and it was so profitable that its stock was worth fifty per cent above par.

The State of Maryland passed a statute that all bills issued by banks not chartered by the state of Maryland must be printed on stamped paper furnished by the state, with a tax of twenty cents on five-dollar bills and graduated upward. McCulloch, the treasurer of the Maryland branch, refused to pay and suit was brought. The lower court, of course, decided in favor of the state, and an appeal was taken to the Supreme Court.

For the Government appeared Webster, Wirt and Pinkney; for the State, Hopkinson of Pennsylvania, who, by the way, wrote "Hail Columbia." Luther Martin of Maryland and Jones of Washington; the greatest array of legal talent that ever sat at one counsel table, except possibly at the trial of Warren Hastings. The argument occupied nine days. Pinkney alone talked for three days; outdid himself and far surpassed Webster. It was this speech that caused Marshall to declare that Pinkney was the greatest lawyer who ever entered a court room.

Beveridge thinks Jones was a great lawyer, and his name appears in the reports of that time as frequently as any other, but he made an unfortunate argument in this case, contending that the federal government was formed by the states, that the old confederation was a true sovereignty, when in fact it was only a collection of embassadors from independent states, errors which Marshall was swift to seize upon.

Martin was then in his seventieth year; had been more or less continuously intoxicated for fifty years, but was in his day the ablest all around lawyer in America and still a formidable opponent.

Marshall's opinion was handed down in three days after the argument was closed. Undoubtedly much of it must have been conceived during the year the case had been pending. It was inevitable that great constitutional lawyers, like Webster, Pinkney and Marshall, earnest believers in nationalism, should think together, that their minds should run in the same channel. Marshall borrowed Webster's famous expression that the power to tax carries with it the power to destroy, but in the main his opinion gains little from the argument.

The first proposition was the constitutionality of the Bank. The constitution does not empower congress to charter a corporation nor to use it as one of the instrumentalities of government. If found at all, it must be found by implication.

He said:

> The counsel for the state of Maryland have deemed it of some importance, in the construction of the constitution, to consider that instrument not as emanating from the people, but as the act of sovereign and independent states. The powers of the general government, it has been said, are delegated by the states, who alone are truly sovereign; and must be exercised in subordination to the states, who alone possess supreme dominion.
>
> It would be difficult to sustain this proposition. The convention which framed the constitution was indeed elected by the state legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation, or pretensions to it. It was reported to the then existing Congress of the United States, with a request that it might "be submitted to a convention of delegates, chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification. This mode of proceeding was adopted; and by the convention, by Congress, and by the state legislatures, the instrument was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively, and wisely, on such a subject, by assembling in convention. It is true, they assembled in their several states,—and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the states, and of compounding the American people into one common mass. Of consequence, when they act, they act in their states. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the state governments.

On the question of the reserved power of the states he said:

> It has been said that the people had already surrendered all their powers to the state sovereignties,

and had nothing more to give. But, surely, the question whether they may resume and modify the powers granted to government does not remain to be settled in this country. Much more might the legitimacy of the general government be doubted, had it been created by the states. The powers delegated to the state sovereignties were to be exercised by themselves, not by a distinct and independent sovereignty, created by themselves. To the formation of a league, such as was the confederation, the state sovereignties were certainly competent. But when, "in order to form a more perfect union," it was deemed necessary to change this alliance into an effective government, possessing great and sovereign powers, and acting directly on the people, the necessity of referring it to the people, and of deriving its powers directly from them, was felt and acknowledged by all.

The government of the Union, then (whatever may be the influence of this fact on the case), is, emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.

In developing his theory of nationalism this was a favorite argument of Marshall's and is repeated many times in different forms. The suggestion here repelled and his answer disclosed the true nature of the controversy with which Marshall dealt in all of his great constitutional decisions, the conflict between state rights and nationalism. The burden of all this long dispute, running through sixty years, until it was settled by the Civil War, is the argument of the Jeffersonian school, that the states established the federal government, delegated to it certain powers reserving all others to the several states "or the people thereof." The nationalist doctrine was that the people who had created the state governments for certain local purposes had then created the national government for another, a general national purpose; that the people had intended the federal government to be a full sovereignty within the scope of the powers granted for national purposes with all the attributes of sovereignty.

He goes on to assert that under the confederation nothing could be taken by implication, wherein it differes from the present government, which was formed to repair the weaknesses of the former.

> Although, among the enumerated powers of government, we do not find the word "bank" or "incorporation," we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may with great reason be contended, that a government, entrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be entrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. Throughout this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the nation may require that the treasure raised in the north should be transported to the south, that raised in the east conveyed to the west, or that this order should be reversed. Is that construction of the constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction (unless the words imperiously require it) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise by withholding a choice of means? If, indeed, such be the mandate of the constitution, we have only to obey; but that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers. It is, then, the subject of fair inquiry, how far such means may be employed.

He comes then to the consideration of the word "necessary," and notes that in other parts of the constitution "necessary" is qualified by "absolutely;" that only in this one section, which gives to congress "all necessary and proper" powers, the word "absolutely" is omitted. In that he finds the strongest evidence that the word "necessary" as there used, does not mean indispensable, but rather, expedient, convenient or appropriate, and he sums up the rule in the sentence so often quoted, as follows:

> Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

This granted, it followed that the choice of "necessary" means lay with congress, and not with the judiciary. Unless congress employed means clearly unconstitutional, the court would not interfere.

Having thus established the constitutionality of the Bank, Marshall addressed himself to the power of the state to tax it. It was strenuously contented that the government was a mere stockholder in the Bank, owning one-fifth of the stock; that its holdings were merged in the general mass; that it was, therefore, not a governmental institution, but a private corporation for profit, like any other bank; that it could be taxed wherever it had a branch that created a situs for taxation. To this Marshall replied that it was a corporation chartered by the federal government for its financial necessity; that it was the fiscal agency of the government; that its bills circulating as currency, were necessary to the bank's existence, as well as furnishing stable currency for all the people of the United States. In fact, at that time the Bank's bills were the only bills that could be carried from one state to another without discount. The bills of every state bank were under a cloud and varied from par to nothing. He announced the axiom that Webster had coined, that the power to tax carried with it the power to destroy, and adopted it as the view of the court.

Speaking of the right of taxation he says:

> It is obvious that it is an incident of sovereignty, and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.
>
> The sovereignty of a state extends to everything which exists by its own authority, or is introduced by its permission; but does it extend to those means which are employed by Congress to carry into execution—powers conferred on that body by the people of the United States? We think it demonstrable that it does not. Those powers are not given by the people of a single state. They are given by the people of the United States, to a government whose laws, made in pursuance of the constitution, are declared to be supreme. Consequently, the people of a single state can-

not confer a sovereignty which will extend over them.

If we measure the power of taxation residing in a state, by the extent of sovereignty which the people of a single state possess, and can confer on its government, we have an intelligible standard, applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of a state unimpaired; which leaves to a state the command of all its resources, and which places beyond its reach, all those powers which are conferred by the people of the United States on the government of the Union, and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the states, and safe for the Union. We are relieved, as we ought to be, from clashing sovereignty; from interfering powers; from a repugnancy between a right in one government to pull down what there is an acknowledged right in another to build up, from the incompatibility of a right in one government to destroy what there is a right in another to preserve. We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power. The attempt to use it on the means employed by the government of the Union, in pursuance of the constitution, is itself an abuse, because it is the usurpation of a power which the people of a single state cannot give.

We find, then, on just theory, a total failure of this original right to tax the means employed by the government of the Union, for the execution of its powers. The right never existed, and the question whether it has been surrendered, cannot arise.

But, waiving this theory for the present, let us resume the inquiry, whether this power can be exercised by the respective states, consistently with a fair construction of the constitution.

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. But all inconsistencies are to be reconciled by the magic of the word CONFIDENCE. Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess of destruction would be an abuse, to presume which, would banish that confidence which is essential to all government.

But is this a case of confidence? Would the people of any one state trust those of another with a power to control the most insignificant operations of their state government? We know they would not. Why, then, should we suppose that the people of any one state should be willing to trust those of another with a power to control the operations of a government to which they have confided the most important and most valuable interests? In the legislature of the Union alone, are all represented. The legislature of the Union alone, therefore, can be trusted by the people with the power of controlling measures which concern all, in the confidence that it will not be abused. This, then, is not a case of confidence, and we must consider it as it really is.

If we apply the principle for which the state of Maryland contends, to the constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the states. The American people have declared their constitution, and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the states.

If the states may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent-rights; they may tax the papers of the custom house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the states.

Of course, the decision was bitterly criticized by the Republicans, and particularly their press. To those who are interested in this phase of the controversy I recommend the Fourth Volume of Beveridge's incomparable "Life of Marshall."

But there is here a new note in the criticism. Marshall had established his reputation as a judge beyond any power of derogation. The very articles that criticize his decision, speak of him with the profoundest respect. They admire, they praise him, while they hate and criticize him. They see their favorite doctrine of the independent sovereignty of the states crumbling under Marshall's powerful blows. And the curious thing is that however much they may criticize his decisions, no critic attempts to answer his logic.

F. DUMONT SMITH.

Don Quixote's Advice to Sancho Panza on How to Administer Justice

"Be not under the dominion of thine own will; it is the vice of the ignorant, who vainly presume on their own understanding.

"Let the tears of the poor find more compassion, but not more justice, from thee than the applications of the wealthy.

"Be equally solicitous to sift out the truth amidst the presents and promises of the rich, and the sighs and entreaties of the poor.

"Whenever equity may justly temper the rigor of the law, let not the whole force of it bear upon the delinquent; for it is better that a judge should lean on the side of compassion than severity.

"If perchance the scales of justice be not correctly balanced, let the error be imputable to pity, not to gold.

"If perchance the cause of thine enemy come before thee, forget thy injuries, and think only on the merits of the case.

"Let not private affection blind thee in another man's cause; for the errors thou shalt thereby commit are often without remedy, and the expense both of thy reputation and fortune.

"When a beautiful woman comes before thee to demand justice, consider maturely the nature of her claim, without regarding either her tears or her sighs, unless thou wouldst expose thy judgment to the danger of being lost in the one, and thy integrity in the other.

"Revile not with words him whom thou hast to correct with deeds; the punishment which the unhappy wretch is doomed to suffer is sufficient, without the addition of abusive language.

"When the criminal stands before thee, recollect the frail and depraved nature of man, and, as much as thou canst, without injustice to the suffering party, show pity and clemency; for though the attributes of God are all equally adorable, yet His mercy is more shining and attractive in our eyes than His justice."—Don Quixote, Chap. XLII.

THE ALPHABET OF LEGAL RELATIONS

Need of a Correct Formulation of Legal Relations, Accompanied by Suitable Terminology, Has Taken on New Significance Since Proposal to Organize American Law Institute

By ALBERT KOCOUREK
Professor of Law, Northwestern University

TABLE No. I

LEGAL RELATIONS

RIGHTS	AUTHORITIES	Claim	←	Duty	RESPONSIBILITIES
		Power	→	Liability	
	EXEMPTIONS	Immunity]	←	Disability	DEBILITIES
		Privilege]	→	Inability	

LIGATIONS

1. *The Basic Relations.* Fifteen years ago such a table as this could have been printed without debate. It might be juristically sound or unsound, yet it is not likely that as recently even as the year 1910 a single voice would have been heard to approve or to disapprove. The situation was definitely changed in the year 1913, when Professor Wesley N. Hohfeld published his celebrated article entitled "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning."[1]

Whatever may be the final word of experts and others as to the value and usefulness of the juristic tables constructed by Professor Hohfeld, it cannot be doubted that Professor Hohfeld and his learned colleagues inaugurated a new era in legal science.[2] Prior to the year 1917, when the Hohfeld system of juristic terminology was first vigorously advanced as a technical program, it had been supposed that it is possible to resolve all legal problems by reasoning directly from legal rules to juridical results without the aid of an intermediate technical principle best described as legal relation. That incorrect view has steadily given and is giving ground, and even though Professor Hohfeld's concrete proposal must, as we believe, be rejected, yet his name deserves to be canonized in jurisprudence for initiating one of the most significant movements since the time of Austin for the scientific improvement of the technical method of legal reasoning.

The need of a correct formulation of legal relations, accompanied by suitable terminology, has taken on a new significance since the recent proposal to organize a permanent Juristic Center or Law Institute for the improvement of the administration of justice. One of the objects of that organization is understood to be a restatement of the corpus juris. It is difficult to see how such a restatement in scientific terms can be made without scientific agreement on such questions as the nature of legal relation, the fundamental types of legal relation, the terminology to designate these relations, and the various difficult problems of classification and arrangement of the body of the law. No doubt all these questions and problems will be met and a solution found. What is here ventured we hope may be of some assistance to those who will bear the difficult burden of decision.

The above formulation is based on the view that legal rules and legal relations involve an element of actual or potential constraint. In order to show the element of constraint and for the purpose of making the Table familiar to the casual reader we shall take up each of the four basic relations separately.

(1). Where there is a Claim there must be a Duty. The terms are correlatives. One implies the other. The dominus (or holder) of a Claim has a capability[3] to constrain with the support of the law the servus (or bearer) of the Duty, to an act. That act may be positive or negative.[4] Thus if S owes D a sum of money, the Duty to pay is the Duty to do a positive act, i. e., to pay. Where S owes a Duty to D not to inflict a corporal hurt on D, the Duty not to inflict the harm is a Duty to perform a negative act, i. e., to refrain from the corporal harm.

The Claim that one has to an act from another must not be confused with the physical power of a person to act on his own account. A landowner has the Liberty to walk on his land. This is the landowner's act. He may have a Claim not to be molested by another, but that Claim is to the act of the other.

Liberty is not a legal relation because it is one-sided. A relation always involves two elements or two sides. Liberty is protected by the law by various Claims and Powers, but in itself it is not within the law. It is rather the end of law. Where Liberty ends the law begins, and where the law ends Liberty begins.

The Claim-Duty relation is symbolized by an arrow. The arrow shows the direction of the act—from the servus of the relation to the dominus.

The terminology at this point is not novel. It is well authenticated, although not widely familiar in the employment of the term Claim.

(2). Where there is a Power there must be a Liability. The terms are correlatives. The dominus

1. (1913) Yale L. Jour. XXIII 16.
2. The Hohfeld System of Juristic Terminology has been the subject of much debate in recent years. See Clark "Relations, Legal and Otherwise" (1922) Ill. L. Quar. V 26; Goble "Negative Legal Relations" (1922) Ill. L. Quar. V 36; Corbin "What Is a Legal Relation?" (1922) Ill. L. Quar. V 50.
3. Capability is used in the sense of a concrete functioning of capacity. One may have a capacity for a given legal relation without being in that relation. Capacity is the juristic substrate of legal capability, just as an empty jug has the capacity of holding a given quantity of a liquid.
4. In a narrow sense, an act is the objective result of a human reflex. In the above article, act is used in a wide sense to include all results which could be produced by a human reflex, or which may be attributed to the absence of an act in the narrow sense.

of the Power has a capability of acting against the servus of the Liability by restricting his freedom or by changing his existing legal position. The Power act may be positive or negative. Thus D by virtue of a Power of appointment may divest the title of S in Blackacre and invest T. Here the Power act is positive. Again where a will provides that title of Blackacre shall vest in trustees, and, if D does not use tobacco before he is thirty years of age, shall go to D in fee, otherwise to T, the Power act of D is negative.

Powers must not be confused with Liberty. If I read my own book, my act does not involve any other person, while a Power relation always involves a Liability of another person to be acted against.

The Power-Liability relation is symbolized by an arrow moving from the dominus of the Power to the servus of the Liability.

The terminology at this point is thoroughly accepted.

(3). Where there is an Immunity there must be a Disability. The terms are correlatives. The dominus of an Immunity may constrain the servus of the Disability from an act. Thus where S, a sheriff, has an execution, and D has filed a schedule of exemptions, S is disabled from making a lawful levy on the exempt property. Here the disabled act is a positive act. Immunities are commonly restricted to positive acts of disablement, but theoretically there is no reason for not also including negative acts.

The Immunity-Disability relation is symbolized by an arrow moving from the servus of the Disability to the dominus of the Immunity. This arrow is preceded by a bracket to show that the act can be obstructed. Thus the levy on exempt chattels can not lawfully be made. The act is obstructed by virtue of a rule of law.

It will be observed that the only difference between a Claim and an Immunity lies in the element of obstruction. Where a Claim exists, an act can be required. Where an Immunity exists, an act can be repelled. Theoretically there is no difference between a Claim and an Immunity. In a narrow sense, an Immunity is a special kind of Claim. It is a Claim which exists as a departure from the general rule. This seems to be the sense of the professional use of the term.

The terminology at this point is probably unobjectionable. It is not likely that better terms could be substituted.

(4) Where there is a Privilege there must be an Inability. The terms are correlatives. The dominus of a Privilege may prevent the servus of the Inability from exacting an act from the dominus. Thus, where there is a so-called "right" of deviation (the usual rule being that one must not trespass on the land of another) the dominus of the Privilege may decline the negative act of not going onto the land of the servus of the Inability. The owner of the land is unable to require the other person not to go on the land. Here the legal Debility relates to a negative act.

Privileges in professional speech are usually limited to negative acts but theoretically there is no reason for not also including positive acts.

The Privilege-Inability relation is symbolized by an arrow moving from the dominus of the Privilege to the servus of the Inability. This arrow at the point of starting is preceded by a bracket to show that the act can be obstructed. Thus the negative act (not to go on the land) can not lawfully be required from the dominus.

It will be observed that the only difference between a Power and a Privilege lies in the element of obstruction. Where a Power exists an act can be done against another. Where a Privilege exists an act can not be required. Theoretically there is no difference between a Power and a Privilege. In a narrow sense, a Privilege is a special kind of Power. It is a capability which departs from the general rule, and in that lies the professional usage which attempts to differentiate the terms Privilege and Power.

The terminology at this point is in part new. The word Privilege is thoroughly domesticated in professional speech, but the word Inability probably has never been used consciously as the exact correlative of Privilege. If that is true, yet the explanation may be that the juristic nature of Privilege has not heretofore been sufficiently analyzed. If D has a license to walk on the land of S, and assuming that it is desirable to emphasize the negative of the negative act (i. e., no duty not to walk on the land) then S can not require of D the negative act (i. e., to stay off the land). S is unable to require the negative act. Inability therefore precisely expresses the idea. The word Disability is excluded on account of prior use and apart from that decisive consideration, it does not here express the right shade of meaning.[5] An examination of all (so far as we know) synonyms fails to disclose a better term for the exact function indicated.

2. *The Common Denominators.* It is believed that so far as two or more of the four specific legal relations above discussed have a common quality this quality is worth designating. In the first place, the lowest common denominators for both sides of the four specific legal relations are Rights and Ligations. In the next place, there are certain intermediate common ideas which are expressed by the correlatives Authorities and Responsibilities, and Exemptions and Debilities.

Claims and Powers are Authorities in which the superior legal position of the dominus is emphasized, Duties and Liabilities are Responsibilities in which the character of the Ligation is emphasized. The servus must respond to his Duty or to his Liability.

Exemptions are forms of Authorities. Where an Exemption is found the dominus can by reason of his legal position repel an act or decline one. The correlative clearly is Debility. The servus of the legal relation cannot lawfully perform an act (Disability) or is unable to require one (Inability). The terms Authority, Exemption, and Responsibility are widely attested. They are common words in professional speech. The term Debility, however, as a law word, has not been encountered. Disability has been used generally either as a specific or as a generic term, but this is not admissible. The basic terms must *never be used as synonyms. They must have one and only one function, if our legal terminology is to be exact.* It is possible that a better word than Debility can be found, but we have not been able to discover another that expresses the right shade of meaning, and it is probable that among law words no other suitable term will be found. Debility accurately characterizes the legal position of the servus. It combines the ideas Disability and In-

5. Disability implies deprivation or loss of power, i. e., because of a reciprocal Duty. Inability indicates inherent want of power, i. e., because of a reciprocal Liability. See Cent. Dict. s. v. Disability. Disability is often used in the sense of a want of Capacity. This is not fortunate; the proper word is Incapacity.

ability. The lack of prior professional use of the term cannot be a fatal objection unless a law word is available.

3. *Negative Terms.* The eight basic terms consisting of four pairs of correlatives should have an inflexible application. The terminology proposed is primarily intended for positive (affirmative) application, but there is also a need in speech to indicate the absence of (a) legal relation or (b) presence of some other legal relation than the one which is the subject of discourse. This leads to a consideration of general negatives and specific negatives.

(1) *General Negatives.* A general negative can be made of each one of the eight basic terms by prefixing the word No or Not. Thus Claim when negated becomes No-Claim. Duty when negated becomes No-Duty. It is possible by a method of juristic conversion to transmute each of the eight basic terms by a negation into another positive term of the eight.[6] By this method which involves some difficulty of analysis a No-Claim is converted into Inability and No-Duty is converted into Privilege. We believe, however, the process of juristic conversion can never become useful in practical legal analysis as applied to the eight basic terms. When, therefore, any one of the eight basic terms is negated, the negation should stand as a general negative, and no inference should be drawn of any other legal relation. If a legal relation is present where another legal relation is negated, the existing legal relation should be affirmatively named. Thus, when speaking of No-Duty where there is a Privilege, the inference should not be that No-Duty is a Privilege, but the Privilege should be specifically affirmed.

(2) *Negatives with Specific Terms.* As already pointed out (and the great importance of the rule justifies its repetition) the eight basic terms should be manipulated only (a) in an affirmative application or (b) as general negatives without any inference in the negation of conversion into any specific legal relation. There is, however, a need apparent in the actual language of lawyers for juristic conversion or perhaps more accurately the designation of general negatives by affirmative terms, and since the eight basic terms are excluded from this process, the four intermediate correlatives (Authority, Responsibility, Exemption and Debility) may be drawn upon to fulfill the required function.

The need should first be illustrated. When one says that in a given legal situation X is free from a Duty, it may be said that X has No-Duty. There is a demonstrable tendency, however, to put it this way: X is ———— from duty. What word shall we insert in the blank? By the rule already stated, we can not put in Immunity. (This would be a misfit even by the method of juristic conversion.) Nor can we, because of the same rule, use the word Privilege. (This is the proper word by juristic conversion.) We must, therefore, search among the intermediate synonyms. Can we fit in the word Responsibility? Clearly not. Debility? Again, clearly not. We are therefore left only with the choice of Authority or Exemption. Let us recall the idea. There is no Duty to act. That signifies freedom from a burden. The right shade of meaning, therefore, is not Authority but Exemption.[7]

We say accordingly that X is Exempt from Duty. The same process of solution will follow for each of the other eight basic terms when qualified by a general negative. It is not necessary to repeat this process in detail for each of the other basic terms and it will suffice to set out the respective conversions as follows:

TABLE No. II

NEGATIVES BY CONVERSION

AUTHORITY	—	DEBILITY
DEBILITY	—	AUTHORITY
EXEMPTION	—	RESPONSIBILITY
RESPONSIBILITY	—	EXEMPTION

In detail as to the eight basic terms the converted negatives are applied as follows:

TABLE No. III

NEGATIVES BY CONVERSION

Absence of	CLAIM	= DEBILITY	= No AUTHORITY
" "	POWER	= DEBILITY	= No AUTHORITY
" "	DUTY	= EXEMPTION	= No RESPONSIBILITY
" "	LIABILITY	= EXEMPTION	= No RESPONSIBILITY
" "	IMMUNITY	= RESPONSIBILITY	= No EXEMPTION
" "	PRIVILEGE	= RESPONSIBILITY	= No EXEMPTION
" "	DISABILITY	= AUTHORITY	= No DEBILITY
" "	INABILITY	= AUTHORITY	= No DEBILITY

As against any objection that may be raised to such difficulties, if any, as may be encountered in mastering these tables, it can only be answered that the law is the greatest practical science of human society; that the fundamental apparatus of this science is relatively simple as compared with the terminology and notation of the other sciences; and that if legal reasoning by reduction to a system of rigid basic ideas will make the administration of justice more rational in its technical premises, no effort can legitimately be spared in attempting to attain a scientific basis of legal discourse.[8]

6. This method is explained in "Tabulae Minores Jurisprudentiae" (1921) Yale L. Journ. 215 (218). This process must not be confused with logical conversion, obversion, or contraposition. Cf. (1914) Sidgwick "Logic" p. 87. It is specific in jurisprudence and may be called juristic conversion.

7. It should be noticed that Exemption, unlike Privilege, does not mean primarily a special advantage, but rather freedom from a burden. It, therefore, may include a special form of freedom from burden and be a major synonym for Privilege and Immunity.

8. It may not be improper to state that the above formulation is not an invention or a product of the closet. Only two terms are used—or at the most three—that have not been used as law words. The only novelty in the fourteen terms employed is in the rigidity of arrangement of the basic terms—and even there no real novelty can be claimed since the arrangement is simply an interpretation of preponderant usage.

The basis of the arrangement was an examination of nearly a hundred volumes of the English Reprint (Vols. 1-98) and a considerable mass of American cases. It is right to say, however, that the examination of this material was undertaken primarily for another purpose.

For Permanent Court of International Justice

The Association of the Bar of the City of New York at a meeting on March 13 adopted a resolution to the effect that "the Association of the Bar of the City of New York joins in what it believes to be the wise judgment of the American people that the United States ought to become one of the supporters of the Permanent Court of International Justice at The Hague and that our Government should therefore adhere to the protocol establishing the court in the manner set forth by the President in his message to the Senate of February 24, 1923." This action was taken pursuant to a recommendation of the Committee on International Law of the Association of which Elihu Root is chairman and Frank W. M. Cutcheon, Abram I. Elkus, James W. Gerard, George L. Ingraham, John G. Milburn, Morgan J. O'Brien, Alton B. Parker, Frank L. Polk, Munroe Smith, Charles H. Strong and George W. Wickersham are members. The report of the committee, among other things pointed out that the creation of the proposed court was a moderate step in the direction of established American policy.

Review of Recent Supreme Court Decisions

(*Continued from page 224*)

least twenty per cent over that which had been achieved before Eibel is very weighty evidence to sustain the presumption from his patent that what he discovered and invented was new and useful.

The defendant produced certain prior art patents which showed elevated conveyors, but the decree of pitch was considerably lower than in the patented structure. These were all constructed for the purposes of seeking drainage. None of them disclosed the discovery which the patentee made or a sufficient decree of pitch to attain his object.

Defendant attempted to seek a narrow construction of the patent, but the view of the court is shown as follows:

> In administering the patent law the court first looks into the art to find what the real merit of the alleged discovery or invention is and whether it has advanced the art substantially. If it has done so, then the court is liberal in its constructoin of the patent to secure to the inventor the reward he deserves. If what he has done works only a slight step forward and that which he says is a discovery is on the border line betwen mere mechanical change and real invention, then his patent, if sustained, will be given a narrow scope and infringement will be found only in approximate copies of the new device. It is this differing attitude of the courts toward genuine discoveries and slight improvements that reconciles the sometimes apparently conflicting instances of construing specifications and the finding of equivalents in alleged infringements. In the case before us, for the reasons we have already reviewed, we think that Eibel made a very useful discovery which has substantially advanced the art. His was not a pioneer patent, creating a new art; but a patent which is only an improvement on an old machine may be very meritorious and entitled to liberal treatment.

Defendant also contended that the terms of the patent were too vague because the extent of the factor of pitch was not defined except by the terms "substantial" and "higher." Applying the controlling doctrine the learned Chief Justice said:

> This patent and its specifications were manifested to readers who were skilled in the art of paper making and versed in the use of the Fourdrinier machine. The evidence discloses that one, so skilled, had no difficulty, when his attention was called to their importance, in fixing the place of the disturbance and ripples to be removed, or in determining what was the substantial pitch needed to equalize the speeds of the stock and wire at that place. The immediate and successful use of the pitch for this purpose by the owners of the then fastest machines and by the whole trade is convincing proof that one versed in paper making could find in Eibel's specifications all he needed to know, to avail himself of the invention.

On the question of infringement the court had no difficulty in finding that defendant used the Eibel invention in view of the construction put on that patent.

The case was argued by Mr. Frederick P. Fish for petitioner and by Mr. Amasa C. Paul for respondent.

Patents,—Validity and Infringement

The assignment of the right to sue a specific infringer does not vest in the assignee such legal title as will support a suit for patent infringement.

Crown Die & Tool Company v. *Nye Tool & Machine Works,* Adv. Ops. 367, Sup. Ct. Rep. 254.

Nye Tool & Machine Works filed a bill in equity, seeking to enjoin the infringement of the Wright & Hubbard patent for a machine for forming screw threaded cutting devices. Plaintiff based its right to sue solely on a purported assignment from the owner of the patent of such claims as the owner of the patent had against defendant for infringement of the patent. Defendant moved to dismiss the bill of complaint on the ground that plaintiff had no legal title in the patent.

The trial court granted the motion to dismiss in order that the opinion of the Circuit Court of Appeals might be quickly ascertained.

The Circuit Court of Appeals for the Seventh Circuit reversed the decree of dismissal holding plaintiff vested with an interest in the patent conferring the right to sue by virtue of the assignment between the owner of the patent and plaintiff. Certiorari was granted because of the importance of the question involved and the possible saving of useless litigation.

The CHIEF JUSTICE delivered the opinion of the court.

Defendant's plea of lack of jurisdiction of the Federal courts was dismissed without merit.

In reversing the Circuit Court of Appeals and in holding that the motion to dismiss should have been granted, the court considered the nature of the title in a patented invention and analysed the common law and statutory rights vested in the inventor. As against plaintiff's claim of legal interest, the learned Chief Justice held that

> The mere right to exclude persons from the making, using and vending of an invention.

is not,

> such an interest in a patent that it can be assigned.

It is an indispensable condition of the granting and establishment of a patent right and patent property that the patentee shall have himself the common law right of making, using the vending the invention. The reason and authority for the federal grant of a patent is set forth as follows:

> It is the fact that the patentee has invented or discovered something useful and thus has the common law right to make, use and vend it himself which induces the Government to clothe him with power to exclude everyone else from making, using or vending it. In other words, the patent confers on such common law right the incident of exclusive enjoyment and it is the common law right with this incident which a patentee or an assignee must have. That is the implication of the descriptive words of the grant "the exclusive right to make, use and vend the invention." The Government is not granting the common law right to make, use and vend, but it is granting the incident of exclusive ownership of that common law right, which can not be enjoyed save with the common law right.

Applying the established doctrine that several monopolies cannot be made out of one, the court held that a patent owner cannot retain the right to make, use and vend and give to others the right to sue certain named infringers:

> If held legal, it would give the patentee an opportunity without expense to himself to stir up litigation by third persons that is certainly contrary to the purpose and spirit of the statutory provisions for the assigning of patents.

The case was argued by Miss Florence King for Crown Die & Tool Co. and by Mr. Russell Wiles for Nye Tool & Machine Works.

PROBLEMS OF PROFESSIONAL ETHICS

IN the last issue of the JOURNAL we commented on canons 1, 2 and 29 of the draft of proposed canons of judicial ethics framed by a Committee of the American Bar Association charged with the duty of preparing such a draft. The entire draft appears in the February, 1923, number of the JOURNAL.

Canons 3 to 15 touching "the public interest," "constitutional obligations," the conduct of judges on the bench and in everyday life, and the appointment and compensation of trustees, receivers, masters, etc., are dignified but searching. If the bar and the public could be assured that all of them would be observed by the incumbents of the bench, the remaining canons might almost be dispensed with. But the lack of this assurance is doubtless one of the reasons which prompted the Committee to proceed with more detailed reference to methods of administering justice; and in particular to suggest canon 16.

In the outset, we observe that the heading of this canon reads "Interference in Conduct of Trial." This characterization impresses us as unhappy; and it is noticeable that in the text of the canon "undue interference" is referred to. For the convenience of our readers, we reprint the canon:

16. INTERFERENCE IN CONDUCT OF TRIAL.

While a judge may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, nevertheless he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto; and in a jury trial the frequency of interruption and interrogation of witnesses by the judge is too apt to create the impression upon the jury that the judge has made up his mind upon the facts or the merits of the controversy, and thus to invade the legitimate province of the jury, and to prevent its proper functioning by unduly imposing the judge's views of the facts upon the jury. This should be avoided.

Conversation between the judge and counsel in Court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses, he should avoid a controversial tone.

He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to an unnecessary display of learning or a premature judgment.

Upon careful perusal of the foregoing, it will, we believe, strike the bar that the draft might well be condensed; and that the use of the word "interference" or "undue interference" as applied to a judge, charged with the conduct of the hearing of the case, is unfortunate. Our space does not permit a detailed discussion of each clause of the draft; but we venture to submit a redraft. It would read something like this:

16. CONDUCT OF JUDGE IN THE HEARING OF A CAUSE.

To clear up a matter that is confused or obscure, or to prevent waste of time, a judge may and should intervene, either in the examination of witnesses or in the argument of counsel. In so doing, however, he should avoid, especially in dealing with witnesses who are excited or ignorant, or with inexperienced counsel, any expression of impatience or severity; and where a cause is tried to a jury, the judge should carefully avoid invading its province by indicating either by his manner or otherwise that he has made up his mind upon the facts or the merits of the controversy. In addressing counsel, litigants or witnesses, he should avoid a controversial or disparaging tone.

At the bar, as we all know, there is constant discussion of the conduct of judges in taking a hand in the actual trial of causes, to the extent, frequently, of displacing the lawyer who is charged with the conduct of the case for the plaintiff or the defendant. Such interposition frequently takes place where the court is or seems dissatisfied with the manner in which the lawyer is presenting his client's side of the controversy; and sometimes occurs when a witness is dull or ignorant or both. It has been correctly said that a law suit should not be viewed in the light of a game or trial of prowess at which the more skilful lawyer and incidentally his client is to be declared the winner; but that it is rather a process or method of ascertaining facts and applying thereto appropriate principles of law. At this point the personal equation of the judge affects the problem. If he is hasty and overbearing, he will with slight ground take up and carry on the examination of a witness. On the other hand, if he is sluggish or indolent, he will sit by while inexperienced or incompetent counsel are clearly failing to present their client's case properly. For instance the examining attorney may, in his search for entirely proper proof, ask a series of leading questions—all of which are ruled out—without enlightenment as to the proper form of the question; or a young trial lawyer may omit to lay a proper foundation for expert evidence—or for impeachment. Should the court give him a lift?

In general, we believe it to be the opinion of practicing lawyers that in trifling or formal matters a judge should enlighten counsel, if enlightenment is needed; but that the court should abstain from charging itself in any degree with the conduct of the case. If the interposition of the court is at all prolonged, he takes his place on the firing line again as a lawyer, and becomes not only an advocate but a most dangerous advocate.

Should it be deemed advisable to enlarge our draft of canon 16, we should be glad to hear from the bar as to whether that draft might be amplified by a provision reflecting the judgment of the profession touching the interposition of the court on the presentation of a cause.

Would the following represent a practicing lawyer's view of the situation?

In the event that counsel are inexperienced or incompetent, while a judge should not undertake to substitute himself for counsel in the conduct of a case or any considerable portion of it—yet it is permissible and at times desirable by way of suggestion to enlighten counsel to the extent of enabling them to put in their proof.

RUSSELL WHITMAN.

Monument to Chief Justice Chase

William H. Taft, Chief Justice of the United States, has accepted an invitation to deliver the chief address May 30, when a monument is to be dedicated in Spring Grove Cemetery to the memory of Salmon P. Chase, one of Ohio's distinguished sons, who served as Chief Justice of the United States.

The monument, of Vermont marble, soon will be shipped from New England. It is to be placed on the Chase burial lot.

CONTRIBUTIONS OF THE COMPARATIVE LAW BUREAU OF THE AMERICAN BAR ASSOCIATION

(*Pages 242 to 272, inc.*)

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Mining Laws of Colombia, by Eder, of this Editorial Staff.
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LATIN-AMERICAN LEGISLATION

New Penal Codes Promulgated in Argentina and Colombia Differ Materially from Old Ones—Dual Nationality Treaty Between Brazil and Great Britain—Government Bank Authorized in Colombia—New Banking Law in Chili—New Insurance Law in Costa Rica Contains Remarkable Provisions—Ecuador—Honduras—Mexico—Nicarauga—Panama—Oil Law in Peru—Salvador—Santo Domingo

Argentina

Legislation, 1921

No. 11,125, June 8, 1921, approves the Convention with Spain for reciprocity in payment of Workmen's Compensation for accidents, of Nov. 27, 1919.

No. 11,126, June 8, 1921, approves the Convention with Italy for reciprocity in payment of Workmen's Compensation for accidents, March 26, 1920.

No. 11,127, June 8, prohibits the manufacture, sale and importation of wax matches containing white or yellow phosphorus.

No. 11,132, July 12, approves the Convention with Belgium signed at Brussels Sept. 23, 1910, as to maritime boarding (abordaje), help and salvage.

No. 11,156, Sept. 19, amended the Civil Code (See last year's Bulletin).

No. 11,157, Sept. 19, prohibits for two years increase of residential rentals above those paid January 1st, 1920.

No. 11,165, Sept. 30, amends art. 5 of Law 10,998 as to National Sanitary Works bonds, authorizing series of 15 million pesos each, at interest not to exceed 6% and 1% cumulative sinking fund.

Law No. 11,170, Oct. 7, lease of Agricultural Lands (see last year's Bulletin).

Law No. 11,173, Oct. 13, amending Law No. 10,650, as to Railroad Employees' homesteads, pensions, insurance, etc.

Law No. 11,177, Oct. 9, amending Arts. 261, 386 and 396 of the Code of Criminal Procedure.

Law No. 11,179, Oct. 29, promulgates the new Penal Code of the Nation.

The Old Penal Code (Law No. 1920 of Dec. 7, 1886) came into effect March 1st, 1887, and had received several amendments, the most numerous being by Law No. 4189, of August 22d, 1903.

The new Code differs materially both in arrangement and in substance and is subdivided as follows:

Book I.—General Provisions, subdivided into 12 Titles, viz.: I. Application of the Penal Law. II. Punishments. III. Conditional (i. e. suspended sentence) Condemnation. IV. Reparation of Damages. V. Imputability. VI. Attempts. VII. Criminal Participation. VIII. Reincidence. IX. Concurrence of Offenses. X. Extinction of Actions and Penalties. XI. Exercise of Actions. XII. Meaning of Terms employed in the Code. Of these, there were no corresponding title headings in the old code for I, III, IV, V, VIII, IX, XI, XII.

Book II.—Title II, "Crimes against Honor" is new. The old Code however contains a title on Slander and Libel, and the denomination of the title heads is changed, though the general matter is naturally not so different.

Book III.—Crimes, subdivided into 12 Titles: Crimes against the Person, Crimes against Honor, Crimes against Morality, Crimes against Civil Status, Crimes against Liberty, Crimes against Property, Crimes against Public Security, Crimes against Public Order, Crimes against the Security of the Nation, Crimes against the Public Powers and Constitutional Order, Crimes against Public Administration, Crimes against Public Faith and Credit; each title being subdivided into chapters treating of specific offenses.

The Code is applicable not only to offenses committed or to take effect in Argentina, but also to crimes committed abroad by agents or employees of Argentine authorities in the discharge of their duties (Art. 1). The death penalty is abolished, also expatriation, punishments being limited to *"reclusión"* (corresponding to the old Presidio) imprisonment, fine and civil disqualification (Art. 5). Convicts (*recluidos*) may be employed on public works but not those under private contract (Art. 6). Minors and women are to be imprisoned in separate establishments (Art. 8). When the term of imprisonment is less than 6 months, reputable women, persons over 60 and invalids may be detained in their own homes (Art. 10). The proceeds of a convict's labor are to be applied simultaneously to pay the damages caused by his crime, to the maintenance of his family, to defray the expense of his imprisonment, and for a fund to be given to him on his release (Art. 11). Release on probation for first offenders is provided for (Art. 13-17); also suspended sentences (Arts. 26-28). The sentence may include reparation of damages caused by the crime, material restitution, payment of costs (Art. 29). The obligation to pay such damages is preferential to all others contracted by the offender after the commission of the offence and payment of the fine (Art. 30).

The exemption, as to insane persons, etc., is altered to read: The following are not punishable: 1. He who could not at the time of the act, either from insufficiency or morbid alteration of his faculties or from his state of unconsciousness, mistake or ignorance of fact not culpable, understand the criminality of the act or direct his actions (Art. 34). The insane, etc., can be detained, however, in separate establishments (id.). Children under 14 (10 in the old Code) are not punishable (Art. 36, new Code; 81 Old Code). They may, however, be placed in reformatories till the age of 18, or if pervert, etc., till 21 (Art. 36). Special regulations are provided for those between 14 and 18 (Art. 37 seq.). Among other interesting provisions are: Duelling is tacitly recognized, being made punishable only in certain cases of circumstances (Arts. 97 seq. 244).

Adultery is criminal, but action can only be instituted privately (and not by the authorities) and only after the decree of divorce has been rendered and the husband is criminally guilty not for isolated acts but only if he has a concubine (Arts. 73, 74, 118). The

paramour of the wife and the concubine are also criminally guilty (id.).

Spouses, ascendants and descendants, and "in-laws" living together, are exempt from criminal liability for thefts and frauds to one another or damage to their property. (Art. 185.)

It is a criminal offence to spread a dangerous, contagious disease (Art. 202); to publicly and by any means whatsoever "hacer apologia" of a crime or a convict (Art. 213); in the case of one entrusted by the Government with negotiations with a foreign power, to conduct the negotiations, in violation of instructions in a manner prejudicial to the Nation (Art. 225); to carry into effect or order carrying into effect Papal bulls, decrees, briefs and rescripts, which require the consent of the Government.

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Recopilación de Leyes Usuales de la República Argentina con sus correspondientes Decretos Reglamentarios, nueva edición, puesta al día. Buenos Aires (J. Lajouane & Cia.) 1922. XXXI, 1110.—Among the principal laws, etc., contained in this valuable compilation (which is exclusive of the Codes) are: The Constitution. Citizenship, Expulsion of Foreigners, Condemnation, Municipal Charters, Laws on the National Bank, National Mortgage Bank, National Savings and other banking institutions, Elections, Posts, Telegraphs, Wireless, Health Laws, Labor, Workmen's Compensation, the Organic Laws of the various National Bureaus, Consular and Diplomatic Service, Employment Agencies, Pensions, Education, Copyright, Trade Mark and Patent, Civil Registry, Territories, Execution of Public Instruments, Attorneys, Tax Laws, Corporations, Debentures, Diplomatic and Consular Service, Extradition, certain Treaties, Currency, Public Credit, Beverages, Custom Tariff, Port Laws, Immigration and Colonization, Public Lands, Mines, Petroleum, Game Laws, Warehouse Receipts (Warrants), Chattel Mortgage and Crop lien, Grain Elevators, Weights and Measures, Irrigation, Railroads.

Carlos C. Malagarriga: Derecho Comercial Argentino, Código de Comercio comentado según la doctrina y la jurisprudencia. Tomo VIII. Artículos 1198 á 1378. Derecho Marítimo III. A continuation of this work which furnishes the most complete commentary on the Commercial Code yet published in the Argentine. The citations of judicial authorities are, as in previous volumes, somewhat scanty. The text is preceded by an exhaustive bibliography, including many English works, but their influence is not apparent in the text itself; the citations as a rule being only of a few standard French writers.

Dr. Tomás Jofré: El Código Penal de 1922. Buenos Aires (Pedro Silvano) 1922. Annotated edition.

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P. J. E.

Bolivia

1. Exportation of Gold.—A decree was issued in September, 1921, stating that gold exportation would be taxed 20 centavos per ounce in accordance with a law of 1872. The decree which renders ineffective the one of February 27, 1918, applies whether the gold be in ore, dust, nuggets or ingots.

2. Immigration Law.—The law of October, 1921, dealing with immigration requires that every person entering the country must have a passport from his native country with a complete personal description and finger prints, visaed by the Bolivian consuls along the course of the immigrant's journey; a health certificate, visaed by a physician of his last place of residence, a certificate that he has not been tried nor condemned for crimes during the last five years, and a certificate that he practices an honest profession. The health certificate only is required for minor children described in the passports of their parents.

3. Importation of Alcohol.—Desiring to protect the national liquor manufactories, Congress has upheld the law of January 23, 1918, which nationalized the alcohol industry and forbade the importation of the raw material for distilling spirits as well as foreign alcohol.

4. Parcel Post Regulation.—In order to prevent the pilfering of the articles contained in parcel post, the government issued a decree regulating the receipt and despatch of packages, on March 28, 1922. The decree provides that international mail pouches shall be taken immediately to the proper section of the custom house, where, in the presence of the custom house and post office officials or of the inspector, they are to be opened and a list made and verified.

5. Foreign Relations Advisory Committee.—The President, by decree of May 2, has constituted a Foreign Relations Advisory Committee, which is composed of ten members. They are: the Minister of Foreign Relations, the Under-secretary of Foreign Relations, the president of the Foreign Affairs Committee of the National Senate, the president of the Foreign Affairs committtee of the Chamber of Deputies ex-officio, and six members appointed by the President from ex-Ministers of Foreign Affairs, ex-diplomatic ministers, party leaders, and distinguished men. The president will appoint members to fill any vacancies.

6. Bolivian Oil Concessions.—A contract has been signed by the Bolivian Government with the

Standard Oil Company in respect to petroleum concessions in Tarija, Chuquisaca and Santa Cruz covering a million hectares. The state is to receive 11 per cent of the total production, with special provisos in the eventuality of war, according to the contract which stipulates for a term of 55 years. A guarantee deposit of a quarter of a million bolivianos are required and any right to diplomatic intervention in the case of disputes is renounced.

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W. S. P.

Brazil

Legislation, 1922

Law No. 4,474, of January 14, 1922, and No. 4,561 of August 21, 1922, authorize the Federal Government to construct, under contract by competitive bidding, houses in the City of Rio de Janeiro, for the public officials and employees, civil and military, to be sold to them on convenient terms of payment.

Law No. 4,460, of January 11, 1922, authorized the Federal Government to grant subsidies of moneys to the Federal District and to the several States, for the building of good roads throughout the country.

Law No. 4,456, of January 7, 1922, creates a National Bureau of Sugar Exportation, in order to buy up stocks of sugar and maintain the prices, and to stimulate the export of sugars of national production.

Executive Decree No. 15,235, of December 31, 1921, provides for the Organization of the Army in time of peace.

Law No. 4,436, of December 30, 1921, authorizes the Executive to establish two lines of aerial navigation between the cities of Rio de Janeiro and Porto Alegre.

A Treaty on Dual Nationality between Brazil and Great Britain was signed between the two powers on July 29th, 1922. In accordance with the constitutional provisions of both countries, children of foreigners born within the respective territorial jurisdictions, are impressed with the nationality of the country within which they are born, and in such circumstances, the same individual is considered by the respective laws as a citizen of both countries. This Treaty is declared to be "the first of its kind ever made in the whole world," and the difficulty thus created was considered impossible of solution, either by local laws of one party, or by treaty between both. But Brazil proposed and Britain accepted the solution accomplished by the Treaty in question.

The Treaty provides:

Art. I. 1.—Any Brazilian citizen, who, by virtue of having been born in Great Britain, has also the British nationality, and who:

(a) has served in the military, naval or air forces of Brazil, or who has concluded an official course of military, naval or aerial instruction, in Brazil, or those who:

(b) being over 21 years of age, making a declaration of renunciation of British nationality, in accordance with the laws of Great Britain, shall be exempt there from military service; and, in the cases of Letter (b), shall lose British nationality for all effects.

2.—Any British subject who, by virtue of having been born in Brazil, has also the Brazilian nationality, and who:

(a) has done his military, etc. service (as above); and those who:

(b) being over 21 years of age, shall lose their Brazilian nationality, in the form of the following Article, are exempt from military service in Brazil.

Art. II. For the effects of Letter (b) of par. 2 of Art. I, the presentation of a Certificate of British nationality, issued by one of the principal Secretaries of State of His Britannic Majesty, shall be equivalent to a patent of British naturalization, and shall consequently import the loss of Brazilian nationality, for all effects, by virtue of this Treaty.

Art. III. The high contracting parties shall establish through their competent Departments the mode of proving the requisites of the preceding Articles.

Executive Decree No. 15,525, of June 14, 1922 (D. O. of June 29, 1922), promulgates the International Convention for the Protection of Literary and Artistic Works—the International Copyright Convention—signed in Berlin on November 13, 1908.

Executive Decree No. 15,524, of June 14, 1922 (D. O. of July 4, 1922), approves and publishes Regulations for the collection of internal revenue taxes on all kinds of devices used by manufacturers, merchants, and others, for the distribution of prizes or premiums connected with the sale of merchandise.

Executive Decree No. 15,589, of July 29, 1922 (D. O. of August 4, 1922), approves Regulations of the Income Tax Law, on companies and individuals.

Executive Decree No. 15,614, of August 16, 1922 (D. O. of August 19, 1922), publishes Traffic Regulations for the Federal District, and for the inspection of vehicles used in such traffic.

Executive Decree No. 15,621, of August 21, 1922 (D. O. of October 7, 1922), approves and publishes new railroad and telegraph tariffs, and Regulations of shipment of goods and transmission of messages.

Executive Decree No. 15,673, of September 7, 1922 (D. O. of November 9, 1922), approves and publishes Regulations for the security, management and traffic of railroads.

Executive Decree No. 15,674, of September 7, 1922 (D. O. of September 22, 1922), creates a Bureau of Pensions for Railroad Workmen of the Brazil Central R. R., and publishes the Regulations for its operation. A graduated scale of obligatory monthly payments from wages into the Pension Fund is established, out of which fund the pensions are to be paid.

Executive Decree No. 15,813, of November 13, 1922 (D. O. of November 19, 1922), approves and publishes Regulations for maritime bills of lading for exports.

Executive Decree No. 15,783, of November 8, 1922 (D. O. Nov. 10, 1922), approves and publishes an extensive Code of Regulations for the Public Accountancy of the Nation. These Regulations consist of 925 Articles, and establish a centralized and quite thorough and modern system of keeping the Public accounts in all departments of the Federal Government.

Executive Decree No. 15,809, of Nov. 11, 1922 (D. O. of Nov. 17, 1922), approves and publishes Regulations for the Registry of Mortgages on Ships. For this purpose the Republic is divided into three Districts, in each of which a special Ship Mortgage Register is to be kept, under the supervision of the local Federal Judge.

Executive Decree No. 15,846 of November 14, 1922 (D. O. of Nov. 18, 1922), approves and pub-

lishes Regulations for the construction of 5,000 dwellings for Public employes, or officials, civil or military, of a maximum value of ten thousand milreis each, the same to be sold to the beneficiaries on easy terms.

Executive Decree No. 15,536, of June 28, 1922 (D. O. of Nov. 17, 1922), approves and publishes Reg-Regulations for the Administration of Corps of troops and Military Establishments. Id. No. 15,537, same dates, regulates the rations for troops.

Executive Decree No. 13,746 of September 3, 1922 (D. O. of Nov. 28, 1922), approves and publishes Instructions for the General Service of Public Accounting, in 386 Articles, with numerous forms for use in all matters of public account.

Executive Decree No. 15,774, of November 6, 1922 (D. O. of Nov. 27, 1922), approves and publishes Regulations for technical and professional training of Brazilian students of agriculture and technical branches, sent abroad by the Government for study in those branches.

Law of December 28, 1822; Decree No. 4,624 (D. O. of December 30, 1922), amends the previous Law of December 22, 1921, by granting a stay of 18 months in dispossess suits for urban property held under verbal lease.

Executive Decree No. 15,905, of January 4, 1923 (D. O. of December 31, 1922), establishes a new Tariff of Consular Fees, for all kinds of consular legalizations, certifications, and other official acts.

Law No. 4,625, of December 31, 1922 (D. O. of January 5, 1923), enacts the general Budget of Receipts of the Government for the year 1923. The estimated receipts for the year are calculated in 82,859:055$, gold milreis, and 721.525:500$, paper milreis, besides smaller amounts with special destination.

Executive Decree No. 15,922 of January 10, 1923 (D. O. of January 11, 1923), decrees the Intervention of the Federal Government in the State of Rio de Janeiro, by reason of the two rival State governments set up there; and appoints a Federal "Interventor", who, on behalf of the Federal Government, shall take over the government of the State, and administer it in accordance with the Instructions of the President of the Republic. These Instructions are published together with the Decree; and authorize to displace the entire State government, to appoint all officials, choosing persons not affiliated with either local faction, to issue decrees with force of law, and to use the public forces to maintain order.

Law No. 4,635, of January 8, 1923 (D. O. Jan. 13, 1923), authorized the liquidation and consolidation of the public floating debt of the Union.

J. W.

Chile

Legislation, 1921

Law 3,718, Jan. 17 (D. O. 12,873, Jan. 17: Boletín de las leyes y decretos, p. 13), authorizes a loan of £5,000,000 sterling and its equivalent for the State Railways.

Law 3,724, Feb. 8 (D. O. 12,892, Feb. 8, Bol., p. 106), tax on tobaccos, cigars and cigarettes.

By Law 3,732, Feb. 23 (D. O. 12,905, Feb. 23: Bol., p. 126), bonds and coupons of such loan were exempted from all fiscal and municipal taxation. By Law 3,738, Feb. 25 (D. O. 12,914, March 5, Bol., p. 174), 50,000,000 pesos of the proceeds of the loan were authorized to be used for highways and other public works and an additional £2,000,000 loan was authorized.

Law 3,733, Feb. 23 (D. O. 12,905, Feb. 23, Bol. 127). Stamp and stamped paper tax. Practically every legal and civil instrument is taxed. [Deeds are subject to 1 per mil; corporation and partnership articles 2½c per 100 pesos on the authorized capital; loans 5c per 100 pesos (including mortgages if in the same instrument); general power of attorney, 10 pesos; checks, 10c.] On the Executive authorization required for foreign corporations and partnerships, 2 per mil on the authorized capital, with a minimum of 1,000 pesos. Foreign loan agencies, also 1,000 pesos and must be expressly authorized (Art. 24: Regulations, Art. 4).

Documents executed abroad to be performed, paid or produce legal effects in Chile pay the tax upon presentation to the Ministry of Foreign Affairs for legalization and no instrument can be protocolized or in general admitted in evidence without first paying the tax (Arts. 17, 37, 40). For Executive Regulations, see Decree No. 1608, July 29, Bol., p. 1253.

Law 3,730, Feb. 16 (D. O. 12,913, March 4: Bol., 178), amends law of Dec. 9, 1914, on Irrigation works and authorizes Land Mortgage Bank which makes loans on property which is subject to the special irrigation tax, to collect the same, in lieu of the State authorities.

Laws 3,772, 3,777, July 15, 28 (D. O. 13,021, 13,038, July 15, August 4: Bol., 903, 907), authorizes a loan for 25,000,000 pesos gold and 50,000,000 pesos paper money, or their equivalent.

Law 3,779, July 30 (D. O. 13,072, Sept. 12: Bol., p. 1,487), approves a Convention with Sweden signed at Stockholm May 26, 1920, for the establishment of a Permanent Commission for investigation and conciliation of international differences.

Law 3,795, Sept. 13 (D. O. 13,073, Sept. 13: Bol. p. 1,517), authorizes advances to nitrate producers. (See last year's Bulletin.)

Law 3,632, May 20 (D. O. 13,091, Oct. 5: Bol. p. 1,655), approves the Convention signed at St. Germain, Sept. 10, 1919 as to Control of Traffic in Arms and munitions.

Law 3,820, Dec. 23 (D. O. 13,157, Dec. 23: Bol. p. 2,083), authorizes loans for 80,000,000 pesos and £1,500,000 sterling.

Law 3,828, Dec. 30 (D. O. 13,164, Dec. 31: Bol p. 2,088), postpones the date for conversion of forced legal tender paper money to Dec. 31, 1924.

Legislation, 1922

Law No. 3,835, Jan. 11 (D. O. 13,182, Jan. 23: Boletín de las leyes y decretos, Jan. p. 16), authorizes contracts for public works at sundry ports. See also L. 3,851 Feb. 10 (D. O. 13,206 Feb. 20: Bol. Feb. p. 300).

Law 3,836, Jan. 11 (D. O. 13,173, Jan. 11: Bol. Jan. p. 22), authorizing the collection of taxes: no new rates or taxes are imposed.

Laws 3,830, 3,855, Jan. 5, Feb. 11 (D. O. 13,169, 13,267, Jan. 6, May 12: Bol. p. 39, 732), authorizes the State Railways to contract a credit for 20,000,000 pesos.

Decree No. 5 of Ministry of Hacienda, Jan. 11 (Bol. p. 172) declares the provisions of decree No. 3,030 of Dec. 22, 1920 in regard to agencies of foreign corporations not applicable to agencies of banking institutions; these are governed by law of July 23, 1860: decree 2,381 of Oct. 31, 1921 is repealed.

Law No. 3,841, Feb. 6 (D. O. 13, 1917: Bol. Feb.

p. 267), reserves the coastwise freight business to Chilean vessels, the President being authorized however to grant reciprocity; rates are subject to governmental regulation; the merchant marine is made part of the naval Reserve. For Regulations of this law, see Ministry of Hacienda Decree No. 464, Mar. 31. (Bol. Mar. p. 526).

Law No. 3,845, Feb. 8. (D. O. 13,207 Feb. 21: Bol. Feb. p. 273), on Banking Accounts Current and cheques. A new law (41 articles) furnishing legislation on a branch not adequately covered by the antiquated Commercial Code. Over drafts are expressly allowed (Art. 3). Banks must deliver numbered check books to each depositor and checks, unless issued by the depositor, in the bank's office, must be drawn therefrom (Art. 15). This provision is of importance in view of articles 16 and 17, which provide that the bank is liable in case of a forged check: (1) if the signature is notably different from that on file; (2) if the check is altered, and (3) if the check is not of the series delivered to the depositor (Art. 163). The depositor however bears the loss if the forgery is on checks of the series delivered to him and the signature is not manifestly different (Art. 17). In general, loss falls on the negligent party (Art. 18). Giving of bad checks is presumably fraudulent and criminal if the depositor voluntarily withdraws funds after drawing the check; if he draws knowing his account to be closed; and if, within three days after knowledge of dishonor, he fails to make good (Art. 22). Checks must be presented within 30 days, if the drawee is in the same city; 60 days, if elsewhere; 3 months additional if drawn abroad; otherwise, right of recourse is lost against endorsers, or against the drawer if failure to pay is due to the insolvency etc. or other fault of the drawee (Art. 23); nor is the drawee obligated to pay, though he may do so upon the written consent of the drawee (Art. 24). Certain formalities are prescribed for the case of lost cheques (Art. 29). The English practice of "crossed" checks is adopted (Arts. 30-32). Executory (i. e. summary) suit must be brought within two months of date of protest: thereafter only an "ordinary" suit lies, against drawer or endorser (Art. 34). Banks must publish annually a list of time deposits not collected after two years and of all other deposits and securities not collected within 5 years from receipt by the Bank (Art. 40).

Law No. 3,849, Feb. 11 (D. O. 13,207 Feb. 21; Bol. Feb. p. 288), authorizes expenditures for drainage works up to 15,000,000 pesos and the issuance of 8% bonds under State guarantee thereof.

Law No. 3,850, Feb. 11 (D. O. No. 13,207, Feb. 21; Bol. Feb. p. 298), levies a tax on cards, phonographs, pianos and electric pianos. For Regulations of this law, Ministry of Hacienda No. 368, March 23 (Bol. March p. 509).

Law No. 3,852, Feb. 10 (D. O. 13,206 Feb. 20: Bol. Feb. 302), imposes an export and import stamp tax of 10c per metric quintal on merchandise. The tax does not apply to cattle, nitrate, State or State Railways merchandise (Art. 3).

Law No. 3,854, Feb. 10 (D. O. 13,206 Feb. 20; Bol. Feb. p. 301), imposes an additional import tax on oils from countries which tax the exportation of the raw material in amount equivalent to such export tax. This law seems from Res. No. 343 of the Ministry of Hacienda, March 22 (Bol. March 499) imposing an additional tax of 150% on cotton seed oil from Perú, to have been aimed at that country.

Regulations No. 184 of the Ministry of Hacienda, Feb. 22 (Bol. Feb. p. 387), on Savings Banks, Insurance companies and the like, operating sinking funds or granting premiums etc. by drawings by lot.

Law 3,859, June 10 (D. O. 13,302, June 12; Bol. June p. 859), creates Embassies in Argentina and Brazil.

Law 3,860, June 14 (D. O. 13,325, July 11: Bol. June, 861), approves a Convention with Colombia as to reciprocal recognition of degrees in the liberal professions.

Decree 939 bis, Ministry of Hacienda, July 18 (Bol. July p. 1,063), regulating the export of wines, beers and alcohol.

P. J. E.

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W. S. P.

Colombia

Legislation, 1921

Law 61, Dec. 28 (Diario Oficial No. 18,046, Jan. 2, 1922). on fiscal matters contains important provisions as to Government finances, contracts and loans, amending Arts. 223, 27, 37 Fiscal Code and Law 54 of 1920, and creates a new credit instrument—Treasury certificates of indebtedness (vales del Tesoro) (Arts. 17-25). Art. 32 provides that any sum of money obtained as damages for the events in Panama, Nov. 3, 1903, shall not be employed or pledged by the Government except when Congress issues the law authorizing the investment thereof. (This refers to the moneys to be received from the United States.)

Law 63, Dec. 31 (D. O. No. 18,052, Jan. 9, 1922), amends Art. 437 of the Fiscal Code.

Legislation, 1922

Law 6, Feb. 6, (D. O., No. 18,126, Feb. 21), on salaries of Government employees and other fiscal matters. Eighty per cent of the net proceeds of the income tax is allocated to the departments. The nation shall either collect such tax directly or contract for its collection with such departments as ask for it. The 20% participation of the Bogotá Health Board is not affected (Art. 22). The issue of $6,000,000 treasury bonds, without interest, is authorized admissible at par in payment of all Government dues and national departmental and municipal taxes. A loan with the security of the terrestial saltworks is authorized to take up such bonds (Art. 42). As to these treasury bonds and also as to the Departmental participation in the income tax bonds, see also Law 12, March 28 (D. O. No. 18,202, April 3).

Law 8, Feb. 18 (D. O. No. 18,130, Feb. 23), amends the Civil Code in relation to the rights of married women, providing that they shall have the administration and free ejoyment of the following property: (1) That specified in the marriage articles; (2) That of their exclusive personal use, such as clothes,

ajuares, jewelry and instruments of their profession or occupation: these cannot be disposed of by one of the spouses alone, regardless of their value. (Art. 1.) The grounds for separation provided for by Art. 154 of the Civil Code, and habitual gambling as defined by Art. 534, shall also be grounds for separation of property. (Art. 2.) Summary proceedings for separation of property are provided, amending Art. 201 of the Civil Code. (Art. 3.) Women are allowed to act as witnesses in all acts of civil life with the same requisites and exceptions as men. (Art. 4.) If the wife shall have given cause for separation by adultery, she shall conserve her right to *acquets* and *gains;* but the husband shall have the administration of her property when there have been children of the marriage, except of her separate property and of what she acquires subsequent to the separation. The usufruct of her property belongs to her, except such quota part as the judge may determine as necessary for the establishment of her legitimate children. The husband shall give security, to the satisfaction of the judge, for the property which he administers and for the usufruct she enjoys. (Art. 5.)

Law 11, March 28 (D. O. No. 18,198), declares various works to be of public utility and repeals subdivision 3 of Art. 2 of Law 43 of 1916.

March 2 (D. O. No. 18,152, March 8), Exchange of ratifications of the treaty with the United States, in settlement of the Panama controversy.

Law 12—See *supra* under Law 6.

Law 14, April 25 (D. O. No. 18,242, April 28), amending Art. 39, Law 85 of 1916. Departmental Assemblies shall be elected by popular vote and shall be composed of one deputy for each 25,000 inhabitants and one additional for each fraction not over 12,000; but in any case not less than 15 deputies.

Law 15, April 27 (D. O. No. 18,248, May 1), the Government may guarantee, subject to legislative approval, Departmental loans for railways.

Law 26, June 12 (D. O. No. 18,387, June 17), amends Arts. 60, 61, 481, 483, 550, 600, 747, 762 (sic: error for 763), 787, 790, 812, 856, 862, 888, 947, 956 and 957 of the Commercial Code. The principal changes enacted by these amendments are: more modern methods for letter-copy books are permitted; the use of the words "Brothers", "Sons" and the like and the inclusion of Christian names, is now expressly permitted in the firm name of general and special partnerships, and also in corporate names, as also in the latter, names of persons, provided S. A. (sociedad anónima, analogous to our Inc.) is added. The addition to Article 747 provides that the Contract of Exchange can be also carried out (in addition to by means of a bill of exchange) by means of a check, money order, domiciled promissory note or telegraphic or cable or other means of transfer. Such transfers are subject to the respective international conventions, or if none, to the rules prescribed by Art. 902 of the Code i. e. in general to the rules governing bills of exchange. Bills of exchange can now be drawn payable in the same place as drawn, subject to stamp tax requirements. The formalities of protest are no longer required to be carried out the day following presentation, but 15 days is now allowed. Any endorsee, even if the endorsement be technically incomplete for lack of the words "value received" or the date, can now sue, without power of attorney, on the bill of exchange, still subject, however, to defences, etc., against the endorser. Time for presentation of bills of exchange is now fixed as follows: at sight or days or months after sight, drawn in one city upon another or the same city in Colombia, three months from date; if drawn at sight or days or months after sight in Colombia on a place abroad, six months; drawn payable at a fixed date or time after date, at the time prescribed. Drafts drawn abroad on Colombia, for legal effects in Colombia, are subject to the foregoing rules. Neglect of the Notary to leave a copy of the protest with the drawee no longer makes the protest void, but merely subjects the notary to a penalty. Protests need not be recorded, but are subject to a stamp tax of $2. The remedy for enforcing a commercial pledge is improved: No defences are now admissible except nullity, falsity, payment or error in account, nor are intervening claims by third parties permissible. Commercial guaranties are also improved; except express stipulation to the contrary, the guarantor or surety can no longer plead *beneficio de excusión.*

The law (Art. 18) further provides that all insurance companies doing business in Colombia either through branches or traveling agents, must invest in the country at least $100,000: 50% in real estate, the remaining 50% in national securities or in cash on deposit in a bank, or in shares of the Bank of the Republic.

Law 30, June 16 (D. O. No. 18,347, June 22), amended by Law 117, December 30 (D. O. No. 18,695, Jan. 9, 1923), authorizes the Government to found a bank of issue, deposit and discount to be known as the Bank of the Republic (*Banco de la república*) (Arts. 1 and 2); duration, 20 years, renewable by Act of Congress (Art. 3); capital, $10,000,000, to be subscribed $5,000,000 by the nation, $5,000,000 by private capital (Art. 4). Board of Directors of 7, 3 to be elected by the Government, 4 by the other stockholders; with an alternate for each director (Art. 6). The manager to be elected by vote of at least 6 directors (Art. 7). Notes issued are to be redeemable on presentation in legal tender gold currency or in emergencies by sight draft or cable on New York or London, have priority over other obligations of the Bank (Arts. 9, 13), are not compulsory legal tender, but shall be received in payment of all Government dues (Art. 10, 11). The right of issue is exclusive (Art. 10). The Bank must maintain a gold reserve in its vaults of one-third of its circulation: the balance of the circulation must be secured by gold in its own vaults or on deposit with other banks in the country or abroad, legal tender money and ninety-day or shorter term paper (Art. 12) and the bank must maintain a cash reserve of 30% against other demand liabilities (id.). It shall rediscount only for domestic banks holding at least 5% of their own paid-up capital in stock of the bank, for foreign bank agencies holding a like percentage of their capital allocated to Colombia (Art. 14), and whose interest charges to the public do not exceed by more than 3% the official discount rate (Art. 16). It cannot acquire real estate except for bank premises or in payment of debts (Art. 17). It is authorized to sell pledges at public auction in case of default (Art. 18). Net profits, after setting aside 15% for surplus and reserves, may be distributed in an equitable manner to be determined in its by-laws between private stockholders, the participating banks and the Government (Art. 21). Two auditors shall be appointed, one by the House of Representatives, the other by the President of the Republic; they are given wide powers (Art. 24). The bank may commence operations with a paid-up

capital of $2,000,000, of which $1,000,000 at least must be private capital. (The Government may use the United States treaty payments for this purpose. Art. 25).

The law also authorizes the Government to contract a loan up to $100,000,000 upon the security of the Treaty payments and such revenues and properties as may be necessary, for the foundation of the bank and public improvements authorized by Congress (Art. 25).

(*Ed. Note:* this law has not yet been availed of.)

Law 32, June 17 (D. O. No. 18,349 June 23), amends Laws 57 of 1915 and 37 of 1921, as to workmen's insurance. Public corporations, employers of labor, may be their own insurers, under Law 37 of 1921. Also private employers, when authorized by the Government, under certain conditions (Art. 1). Other substantial amendments are made in the law.

Law 44 of 1922, Sept. 22 (D. O. No. 18,521, Oct. 2), renders homage to the memory of Pasteur, and contributes to a monument to be erected to him.

Law 45, Sept. 29 (D. O. No. 18,527, Oct. 5), reorganizes the Information Bureaus abroad (i. e., New York, London, Paris, Barcelona, Hamburg), amending Law 11 of 1918 and Law 6 of 1922.

Law 54, Oct. 13 (D. O. No. 18,547, Oct. 18), authorizes the executive to contract for the establishment of aeroplane mail service.

Law 56, October 21 (D. O. No. 18,569, Oct. 27), amending Law 41 of 1921 in regard to telephone companies, etc. If one or more departments or a department and one or more municipalities are the sole stockholders of a telephone company, no time limitation is required for the franchise, nor need the enterprise revert to the Department (Art. 1). The option, under subdivision "d" of Art. 5 of Law 41 shall be in effect at the end of 5 years from date of installation (Art. 2). Notwithstanding the prohibitions contained in subdivisions 5 and 7, Art. 171, Law 4 of 1913, the promotion of public utilities, such as tramways, lighting and telephones, is within the jurisdiction of the Municipal Councils, although the works be outside the territorial jurisdiction of one municipality, under agreement of the interested municipal councils (Art. 3). Telephone and electric lines and tramways, by municipalities or departments, are declared of public use (Art. 4). The purpose of Art. 1 of Law 41 of 1921 is declared to be the promotion of uniform telephonic service.

Law 57, Oct. 23 (D. O. No. 18,569, Oct. 27), amends Art. 373 of the Fiscal Code, and prescribes new requirements as to the auditing of accounts of public officers.

Law 60, Oct. 23 (D. O. No. 18,569, Oct. 27), authorizes the employment of foreign financial experts to assist in the reorganization of revenues, taxes and public credit.

Law 62, Oct. 30 (D. O. No. 18,583, Nov. 4), approves a contract with Blair & Co. for a loan of $5,000,000 for the (national) Pacific Railway, of 25 year 8% secured external sinking fund gold bonds.

Law 66, Nov. 4 (D. O. No. 18,595, Nov. 11). Patents granted under Law 35 of 1869, the term whereof has not yet expired may be renewed upon application of the party in interest, within the terms prescribed by Law 49 of 1911.

Law 71, Nov. 14 (D. O. No. 18,609, Nov. 20), approves the convention with Uruguay signed at Montevideo April 28, 1922, in regard to exchange of professors, and reciprocal recognition of academic degrees.

Law 72, Nov. 14, id. Organic law of Diplomatic and Consular Service. Diplomatic officials and consuls-general are now required to be Colombian citizens (Art. 2) and foreigners can only be appointed to honorary posts.

Law 76, Nov. 18 (D. O. 18,619, Nov. 25), approves the Universal Postal Union Conventions signed at the Madrid Congress of November, 1920.

Law 79, Nov. 23 (D. O. No. 18,629, Nov. 30), amends the Income Tax Law, No. 56 of 1918. Exemption for a married man or one with dependents is fixed at $960; for others $600 (Art. 1); claims for over-payments are authorized (Art. 3); payment of the tax in semi-annual installments is authorized (Art. 4).

Law 80, Nov. 24 (D. O. No. 18,629 Nov. 30), amendments to the Election Law.

Law 81, Nov. 24 (D. O. 18,629) on suspended sentences.

Law 83, Nov. 28 (D. O. No. 18,639, Dec. 5), determining the manner and rate of collection of the consumption tax on wines, liquors, drugs, paper, perfumery, soap, tobacco, etc.; amending Laws 117 of 1913, 126 of 1914, 69 of 1917 and 63 of 1919.

Law 85, Nov. 29 (D. O. id.), amending Laws 83 of 1914 and 67 of 1920 in regard to the practice of medicine and allied professions.

Law 91, Dec. 4 (D. O. No. 18,643, Dec. 7), makes the Advisory Board of the Ministry of Foreign Affairs a permanent body, composed of 5 members appointed for two years, 3 elected by the Senate, 1 by the House of Representatives, 1 by the President.

Law 96, Dec. 7 (D. O. No. 18,651, Dec. 13), authorizes the Government to organize in its discretion, the revenue from fisheries, amending Law 58 of 1914.

Law 99, Dec. 7 (D. O. 18,657, Dec. 16), amending the laws as to Public Hygiene. Report by physicians of contagious-infectious diseases is made, in some cases obligatory, in others optional (Arts. 1-3), physicians being relieved of the obligation of professional secrecy in respect thereof (Art. 4). If realty or personalty is required to be burnt, as a preventive measure, the State must compensate the owner (Art. 7). Small-pox vaccination is obligatory (Arts. 9, 11). The Public Health authorities are given jurisdiction: to pass upon plans for hospitals, market-places, slaughterhouses; to supervise institutions supported in whole or in part by public funds; over manufacture and sale of foodstuffs and water-supply (Arts. 13-15). In tropical towns, banana, corn, cane and other plantations where breeding pools for mosquitoes may collect are prohibited within 200 meters of habitations, and tanneries and other establishments which may be deleterious to health are similarly restricted throughout the Republic (Art. 16). The municipalities are authorized to levy assessments for drainage (Art. 17) and to tax sales of imported merchandise, on which the nation does not levy a sales tax, for health expenditures (Art. 23). Disease of live-stock must be reported (Art. 19). Departmental Assemblies are authorized to pass health ordinances (Art. 35).

Law 104, Dec. 18 (D. O. No. 18,669, Dec. 22), amending sundry articles of the Judicial Code and amendments thereof chiefly in regard to criminal prosecutions.

Law 105, Dec. 18 (D. O. No. 18,671, Dec. 23), in regard to Penal colonies.

Law 107, Dec. 20 (D. O. No. 18,677, Dec. 27), authorizing the construction of certain *tramways* and amending Law 129 of 1896.

Law 110, Dec. 27 (D. O. No. 18,687, Jan. 3, 1923), contains provisions of interest in regard to oil concessions in certain regions of the country.

Law 114, Dec. 30 (D. O. No. 18,693, Jan. 8, 1923), on Immigration and Agricultural Colonies.

Law 117, Dec. 30 (D. O. No. 18,695, Jan. 9, 1923), amending the Organic Law (No. 30, *supra*) of the Bank of the Republic.

Law 102, Dec. 14 (D. O. No. 18,663, Dec. 19), creates the *Junta Nacional de Empréstitos* (National Loan Board) and gives executive wide power; authorizes the Government to contract a loan or loans up to $100,000,000, for the construction and development of railways, port and river improvements (Arts. 1, 3, 4), crates a National Loan Board of 5 members, elected 3 by the House of Representativs, 2 by the Senate (Art. 2). The security authorized is a mortgage on the railways, pledge of the net proceeds thereof, pledge of the navigation imposts, 80% of the proceeds of the treaty monies and the proceeds of any other property or revenues not affected for the ordinary service of the budget (Arts. 5, 6). The Government cannot draw the proceeds of the loan without the authorization of the Loan Board (Art. 8). Special arrangements with the departments for participation in the loan are authorized (Art. 9). Loan contracts, under the law, require the approval of the Council of State, the National Loan Board and the Executive Power, after publication for 15 days, but no further Congressional action (Art. 13). If a loan cannot be obtained within 1 year, the Government is authorized to use the treaty monies to promote public works (Art. 15). The Government is authorized to include in the loan contract, construction contracts (Art. 18). The Government is authorized to employ engineering experts to make a study of present and proposed railways (Art. 17).

Law 109 (Dec. 27, D. O. 18,703, Jan. 13, 1923). A new Penal Code, repealing the Penal Code of 1890 (Law 19) and all amendments thereto, except the press laws (Art. 422). Both in form and in substance, the new code is materially different, the law being modernized. The principal subdivisions are as follows: BOOK I, of the Penal law in general. Title 1, The penal law, when in force and its application. Title 2, Punishments. Title 3, Execution and consequences of punishments. Title 4, Penal responsibility, justification, excuse and attenuation. Title 5, Attempts and frustrated crimes. Title 6, Cooperation of various individuals in the commission of the same punishable act. Title 7, Concurrence of punishable acts committed by the same individual. Title 8, Reincidence. Title 9. Extinction of the action and penal condemnations. BOOK II, of the different kinds of offenses. Title 1, Offenses against the Fatherland. Title 2, Offenses against the National Powers. Title 3, Offenses against foreign nations, their heads and reresentatives. Title 4, Provisions common to the foregoing titles. Title 5, Offenses against liberty. Chapter 1, Offenses against liberty. Chapter 2, Offenses against religion. Chapter 3, Offenses against individual liberty. Chapter 4, Offenses against the inviolability of domicile. Chapter 5, Violation of secrecy. Chapter 6, Offenses against liberty of industry and labor. Title 6, Offenses against public property. Chapter 1, Peculation. Chapter 2, Coercion. Chapter 3, Corruption of public officials. Chapter 4, Abuse of authority and infraction of duties of public officials. Chapter 5, Usurpation of public titles and functions. Chapter 6, Resistance to authority. Chapter 7, Outrages and other offenses against public officials. Chapter 8, Violation of seals and thefts from public offices. Chapter 9, Provisions common to the foregoing chapters. Title 7, Offenses against the administration of justice. Chapter 1, Refusal to render legally obligatory services. Chapter 2, Malicious prosecution and calumny in judicial proceedings. Chapter 3, Perjury. Chapter 4, Barratry. Chapter 5, Protection of evil-doers. Chapter 6, Escape of prisoners. Chapter 7, of the prohibition of self-rendered justice (including duelling). Title 8, Offenses against public order. Chapter 1, Instigation to commit an offense. Chapter 2, Conspiracy. Chapter 3, Incitement to civil war, illegal arming of forces and public intimidation. Title 9, Offenses against the public credit. Chapter 1, Forgery or alterations of money and forgery of documents of public credit. Chapter 2, Forgery of public seals, stamped paper and stamps. Chapter 3, Falsification in instruments. Chapter 4, Falsification in licenses, certificates and other documents. Chapter 5, Frauds in trade, industry and auctions. Title 10, Offenses against public safety. Chapter 1, Arson, flooding, wrecking and other offenses implying a common peril. Chapter 2, Offenses against the security of means of transportation or communication. Chapter 3, Offenses against the public health. Chapter 4, Provisions common to the foregoing chapters. Title 11, Offenses against morality and the family. Chapter 1, of carnal violence, corruption of minors and outrages against modesty. Chapter 2, Abduction. Chapter 3, Proxenetism. Chapter 4, Provisions common to the foregoing chapters. Chapter 5, Adultery. Chapter 6, Bigamy. Chapter 7, of public concubinage. Chapter 8, of the supposition and suppression of the civil status. Title 12, Offenses against the person. Chapter 1, Homicide. Chapter 2, Mayhem. Chapter 3, Provisions common to the foregoing chapters. Chapter 4, Abortion. Chapter 5, Abandonment of children or others incapable of self protection or in danger. Chapter 6, of abuses in correction of subordinates and maltreatment in the family. Chapter 7, Libel and Slander. Title 13, Offenses against Property. Chapter 1, Theft. Chapter 2, Robbery, extortion and false imprisonment. Chapter 3, Cheating and other frauds. Chapter 4, Bankruptcy and other frauds in trade. Chapter 5, Embezzlement. Chapter 6, Receiving stolen goods, etc. Chapter 7, Usurpation (trespass). Chapter 8, Malicious injury. BOOK III, Misdemeanours. Title 1, Misdemeanours referring to public order. Title 2, Misdemeanours referring to public safety. Title 3, Misdemeanours referring to public morality. Title 4, Misdemeanours referring to property. Title 5, This Code, when in effect, and the authorities who are to judge misdemeanours. The Code is to go into effect January 1st, 1924.

Among particularly noteworthy provisions may be mentioned the following:

Colombians committing crimes abroad, can be prosecuted in Colombia, but cannot be extradited therefrom (Arts. 7-10). Release on parole and suspended sentences are provided for (Arts. 16, 25). No death penalty is imposed, and the maximum term of imprisonment is 30 years (Art. 11, 12). The sentence shall include liability for expenses of the trial (Art. 34). In the case of misdemeanours, criminal intent need not be an element (Art. 40). If the defence of insanity appears well founded, the accused is to be confined for one year in an asylum under observation, the trial being

meanwhile suspended (Art. 41). Mental disorder not amounting to a complete defence or a fit of anger under unjustified provocation may be an attenuating circumstance to reduce the punishment (Arts. 42, 49). Raising or lowering prices of merchandise or foreign exchange by spreading false reports or other fraudulent means is criminal (Art. 246).

Law 115, Dec. 30 (D. O. No. 18,695, Jan., 1923), providing for the conversion and unification of the internal debt. The issue of long-term bonds is authorized for the purpose. For the service of debts the customs tariff of Law 117 of 1913 is increased 10%, effective July 1st, 1923. The Advisory Committee authorized by Law 60 (*supra*) is increased. The Government is authorized to contract with a group of lawyers for the collection, on a contingent fee basis, of debts due the Government.

Executive Decrees and Departmental Resolutions

Resolutions of the Ministry of Public Works, May 11, Oct. 18 (D. O. 18,285, 18,575, May 19, Oct. 30). Law 38 of 1887 is interpreted to require that denouncers of mines must affirmatively prove that the mines are not situated on lands devoted to agriculture or grazing: beds of rivers bordering on such lands are within the prohibition of the law as to grant thereof as mines without permission of the owner of the land. The requirement is equally applicable to denouncements of excesses or continuations of mines. Under the same date of Oct. 18th another resolution prescribes requirements for the denouncement of a mine as a continuation of another mine (Art. 41 of the Mining Code).

Resolution No. 182, July 14 of the National Director of Hygiene (D. O. No. 18,501, Sept. 20), prohibits the manufacture and sale of artificial wines and brandy, i. e., not prepared from grapes.

Decree No. 1,326, Sept. 15 (D. O. No. 18,503, Sept. 21), regulating the procedure for petitions for recognition (corporations other than business corporations) as juristic persons. The petitions must be forwarded to the Ministry of Government through the office of the local Departmental Governor who must certify that the purposes and organization are not contrary to public policy and are in accordance with the law (Art. 1). There must be annexed to the petition certified copies on stamped paper of the By-Laws and minutes of meetings electing officers (Art. 2). Amendments must be submitted for approval to the Executive Power; exception may be taken to the By-Laws by those claiming to be damaged, either before the administrative authorities or the courts (Art. 3). Resolutions of recognition as a juristic person must be published in the *Diario Oficial*, at the expense of the applicant, and do not take effect until 15 days after publication: this provision is applicable also to *foreign corporations* (Art. 4).

Resolution of Ministry of Agriculture and Commerce Sept. 11 (D. O. No. 18,505, Sept. 22). Prior registration of a word in a foreign language as a trademark does not prevent registration of the translation into Spanish of such word, or vice versa, provided the two words are so dissimilar in spelling and sound as not to cause confusion. In the case decided, "Estrella" was held not to be an infringement of "Star" even though applied to the same class of goods.

Resolution of Ministry of Public Works, Oct. 3 (D. O. No. 18,555, Oct. 23). Mines can be granted to American citizens or corporations provided the laws of their home State permit the acquisition of mines and real estate by Colombians, pursuant to the principle of reciprocity prescribed by Art. 11 of the Colombian Constitution.

Resolution of Ministry of Public Works, Oct. 3 (D. O. No. 18,555, Oct. 23). In adjudications of mines, it is not requisite to leave a strip of land on the banks of rivers free for "pan-washing" (*mazamoreo*); such right is to be exercised in the beds of rivers, and it not suspended or limited by the adjudication of mines in the beds of non-navigable rivers. Adjudication of mines in beds of navigable rivers is prohibited by Law 72 of 1910.

Resolution No. 248, Oct. 11 of the Ministry of Finance (D. O. No. 18,545, Oct. 17) in regard to pearl fisheries. A royalty of 20% is payable to the Government.

Decree No. 1481, Oct. 18 (D. O. No. 18,555, Oct. 23). Exporters of platinum are required to obtain a license, stating in the petition the port of shipment, destination and weight of each proposed shipment (Art. 1). The Administrator of Customs must require such declaration in the export manifest; and liquidation of the export tax is based on the foreign price as reported by the Department of Agriculture and Commerce, less 10% for insurance, and shipping commission and refining expenses (Art. 2). Decrees Nos. 493 of 1911 and 120 of 1922 are amended (Art. 3).

Resolution No. 226 of Ministry of Government Nov. 20 (D. O. Dec. 6, 1922), upon opinion of the Council of State, Nov. 10, on municipal ordinances establishing or increasing indirect taxes. The expression "law" in the Constitution (Art. 69 of Legislative Act. No. 3 of 1910) comprises not only the acts issued under that name by the National Congress, but also the Ordinances and resolutions of the Departmental Assemblies and municipal Councils and consequently no indirect tax levied or increased can begin to be collected until 6 months after promulgation.

Resolution No. 230 of Ministry of Government, Nov. 25, 1922 (D. O. No. 18,645, Dec. 9), upon opinion of Council of State, Oct. 21, as to the rights of the Departmental Assembly to pass an Ordinance over the Governor's veto, and upholding the power of the National Government to order the Governor to enforce such an ordinance. P. J. E.

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Costa Rica

Executive and Legislative Decrees

Exec. Decree, Feb. 28 (La Gaceta, March 2), approves the Hispano-American Postal Convention signed at Madrid Nov. 13, 1920.

Legislative Decree No. 4 (La Gaceta No. 72, March 26), Emergency Rent law: if no time specified in the lease, one year's notice must be given by the landlord to dispossess (Art. 1). Builders of cheap residential property are entitled to rebate of customs house duties on imported materials and 50% of railroad freights. The foregoing provisions to be in force for two years (Arts. 1 and 2). Builders of such houses are also exempt from land taxes for 5 years (Art. 3).

Dec. No. 6, May 23 (La Gaceta 117, May 25), approves a special convention with Great Britain for the

arbitration, by the Chief Justice of the United States, of certain pending claims.

Dec. No. 8, May 26 (La Gaceta 120, May 28), creates a Bureau of Control of all revenues and expenditures.

Dec. No. 11, June 2 (La Gaceta 126, June 4), amends the Notarial Law (as to qualifications), of Oct. 12, 1887 and June 18, 1915.

Dec. No. 19, June 12 (La Gaceta No. 135, June 15), approves the Extradition treaty with the United States signed at San José, Jan. 21, 1922.

Dec. No. 20, June 12 (La Gaceta No. 135, June 15), imposes an additional temporary import tax of ½ céntimo de colon gold for each kilogram of merchandise imported into San José; authorizes the Executive Power to contract a loan with the security of such tax for the purpose of building cheap houses for laborers and authorizes the construction and sale on installments of such houses.

Dec. No. 17, June 22 (La Gaceta No. 145, June 28), amends the Property tax law (affecting also Registry of Deeds) No. 72 of Dec. 18, 1916.

Dec. No. 22, June 23 (La Gaceta No. 143, June 25), repeals Law 20 of July 6, 1920.

Dec. No. 29, July 7 (La Gaceta No. 154, July 8), extends to June 30, 1924, the export taxes imposed by Decree No. 30 of July 7, 1921; and reestablishes the Income Tax as imposed by Law No. 73 of Dec. 18, 1916 (with one minor amendment). As long as the export tax on coffee is in force, coffee planters are exempt from the income tax on income from their coffee plantations (Art. 6).

Legislative Dec. 33, July 12 (La Gaceta 158, July 13), on the jurisdiction of the Judge of Contentious Administrative matters. Among other matters he has jurisdiction of all litigation in which the State is a party and directly interested; or in which a municipality is interested, provided the amount exceeds 250 colones (Art. 1) and denouncements of mines and public lands (Art. 4). Procedure unless otherwise specially provided by law, is that of the Code of Civil Procedure (Art. 6). Law of August 2, 1916 is amended (Art. 1). Administrative remedies must first be exhausted before recourse to the Court (Art. 3).

Legislative Dec. No. 35, July 13 (La Gaceta 162, July 18), amends Art. 967, of the Code of Civil Procedure.

Legislative Dec. 45 (supplement to La Gaceta No. 167, July 23), Budget.

Executive Dec. July 20 (La Gaceta No. 176 and 195, August 3 and August 26), ratifying the Pan American Postal Union Parcels Post and Money Order Conventions signed at Buenos Aires Sept. 15, 1921.

Dec. No. 3, August 31 (La Gaceta No. 201, Sept. 2), Anti Gaming law.

Dec. No. 8, Sept. 14 (La Gaceta No. 212, Sept. 15), repeals Title 13 of the Code of Criminal Procedure, substituting therefor the provisions of this law. The subjects treated of are: preventive arrest, release from imprisonment and release on bail.

Dec. No. 14, Sept. 30 (La Gaceta 226, Oct. 3), Law of Habeas Corpus, repealing laws of Nov. 12, 1909, and August 23, 1921.

Dec. No. 11, Oct. 2 (La Gaceta No. 230, Oct. 7). *Insurance Law*—A comprehensive law of 74 articles containing some rather remarkable provisions. The following may be noted: The owner of a factory on which he effects insurance, as well as the owner of any insured building who has work done thereon, shall be deemed an insurer, at his expense, of the workmen's tools therein; and consequently, if this risk be not included in the policy, nevertheless from what he receives under his policy, there shall be taken the amount necessary to indemnify his workmen. An analogous obligation is imposed in respect of the clothing and personal effects of servants and employees (Art. 3). Notwithstanding any provisions of the policy to the contrary, payment and enforcement thereof shall be made in Costa Rica, unless the parties at the time of payment agree otherwise. Any waiver of this provision is void (Art. 4). With certain specified limitations, the insurance passes by operation of law to the new owner upon transfer of the property insured, even without an express assignment of the policy (Art. 9). Buildings can not be insured for a greater amount than the essessed value on the books of the Tax Office (Art. 13). A policy of insurance is only binding and admissible in evidence after presentation to the Registry of Insurance policies (Art. 17). If the person who claims as beneficiary under a policy, is the author or accomplice in the death of the assured, and so declared in a judgment, he shall lose all rights, which pass to the legitimate heirs of the deceased, excluding the guilty party. Without the consent of the person whose life is insured, the insurance is void, unless taken out by his attorney in fact (Art. 23). In case of group accident insurance, the injured workman is given a direct right of action against the insurance company (Art. 31). Appraisals in case of loss are made by experts appointed by the court (Art. 35 seq.). Their decision gives the insured the right to bring an executory action (Art. 38 seq.). Every insurance company upon paying a policy, must deduct 10% thereof and deliver such percentage to the municipality, which holds the same for the purposes of paying the claims of persons who have suffered injuries in helping to put out the fire or in other salvage, and of the heirs of persons who have lost their lives while so engaged; to pay two weeks wages to employees who are thrown out of work by the fire; to indemnify uninsured owners of neighboring property who have suffered loss; of buying new fire apparatus. Fire insurance companies must pay a tax of 5% of their premiums (Art. 43). Both native and foreign companies must be licensed (Art. 44 seq.) and the latter must maintain a permanent representative therein and are subject to the laws and courts of Costa Rica (47-49). The office of Superintendent of Insurance is created (Art. 50 seq.) not only with wide powers of inspection, but his written permission is required for every individual fire policy; this permission is given only after petition by the applicant for insurance and inspection of the property insured by an official Inspector, and such inspection has to be repeated every 6 months or oftener, and the amount of insurance carried reduced if necessary. All policies of every kind of insurance must be inscribed in the Registry of Insurance policies (Art. 64 seq.) without which formality they and all renewals, and cancellations, are void. Every 3 months, the Superintendent of Insurance must publish a list in the Gaceta of all insurance in force (Art. 59). Notice of insurance effected abroad must be given to the Superintendent of Insurance, and in case of failure to give such notice, the insured will be deemed guilty of attempted arson, and in case of fire, of arson. This requirement of notice extends to policies now in force, notice being required to be given, in the case of residents, within one month of the pro-

mulgation of the law and in the case of those residing abroad, within 6 months (Art. 71).

Dec. No. 17, Oct. 5 (La Gaceta 234, Oct. 12), establishes a Conversion section (Caja de Conversión) in the Government Bank, the Banco Internacional. Its bank notes are to be redeemed at the rate of 4 colones to the dollar, in gold or drafts on New York, at the option of the Bank (Art. 2) or to purchase or sell foreign bills with or for its own notes (Art. 3-6). The proceeds of the banana export tax, and from July 1, 1924, the coffee export tax (to be reduced to 75c per 46 kilos) are to be used for the Conversion fund (Art. 7-8). These taxes are to be paid in gold or sight drafts on New York (Art. 9). The new bank note issues of the Caja de Conversión are to be admissible in payment of all Government dues on a par with the notes of the Banco Internacional. American gold coin is to be likewise receivable at the aforesaid rate (Art. 10-11). Further issues of inconvertible bank notes are prohibited (Art. 12). The Caja can issue notes only against actual gold or New York drafts (id.). The Bank shall receive such notes (as issued against the export taxes), from the Caja in payment of the indebtedness of the Government to the Bank (Art. 9). The Bank shall retire its own bills to the like extent and cannot place in circulation the new bills received by it until the Conversion Fund has reached a minimum of $1,500.000 (Art. 9-15). Reports must be published monthly (Art. 16). Export of gold coin is permitted (Art. 16). Import and other gold duties shall hereafter be paid in notes, instead of in gold; the rates of import duties are doubled (Art. 13).

Dec. No. 18, Oct. 11 (La Gaceta 235, Oct. 14), grants a subsidy to Costa Rican and resident coffee planters in the province of Guanacaste, for 20 years, of $1.50 for each 46 kilos of coffee exported—payable in bonds receivable in payment of Government dues. Plantations in said province are exempted from taxation; the privileges are limited to 100 hectares.

Dec. No. 43, Dec. 22 (La Gaceta No. 295, Dec. 24), interpreting Arts. 48 and 71 of the Insurance Law, *supra*, requires permission of the Superintendent of Insurance to be obtained in order to effect insurance abroad; and providing upon order of the Superintendent, for reduction of the amount insured abroad.

Law No. 25, Oct. 28 (La Gaceta No. 248, Oct. 29), prohibits under criminal penalties recruiting labor for service abroad, without permission of the Executive, and prescribes the condition under which such permission may be given.

Exec. Dec. No. 10, Oct. 30 (Supplement to La Gaceta No. 250, Nov. 1). Customs tariff.

Dec. No. 31, Nov. 24 (La Gaceta 271, Nov. 25), creates a national license tax on all commercial and industrial establishments (except cetrain specified foodstuffs). P. J. E.

Ecuador

Bibliography

Ley Orgánica del Poder Judicial. Ley de Aranceles de Decretos Judiciales. Edición hecha por la Academia de Abogados de Quito, con aprobación de la Corte Suprema de Justicia en cumplimiento del Decreto Legislativo de 4 de octubre de 1912. Quito, 1922. P. J. E.

Honduras

Legislation, 1922

Legislative Decree No. 108, April 10 (La Gaceta, No. 5,932, May 11) approves the Hispano-American Postal Convention signed at Madrid, Nov. 13, 1920.

Legislative Decree No. 107, April 10 (La Gaceta, No. 5,912, April 18), requires foreign companies doing a life or accident insurance or savings bank business in Honduras to become incorporated as juristic persons in the Republic and to have a permanent legal representative therein on whom process can be served (Art. 1) and to deposit $50,000 in the National Treasury, without interest (Art. 2). Sanction is fine and prohibition to do business (Arts. 3, 4).

In La Gaceta, No. 5,876, March 4, is published the Decree (No. 14) of the Federal Provisional Council of the ill-fated Republic of Central America, suspending its sessions. P. J. E.

Mexico

Decrees and Regulations, 1921 and 1922

Ex. Decs. Dec. 27, Dec. 30, 1921, May 17, 1922 (D. O. No. 17, Jan. 20; No. 23, May 29, 1922) amending the Federal Stamp Tax regulations.

Ex. Decree, Dec. 30, 1921 (D. O. No. 17, Jan. 20, 1922), fixing the tariff for exploration of fisheries in federal waters.

Congressional Decree, Jan. 9, 1922 (D. O. No. 14, Jan. 17, 1922), repealing the Organic Law of the Mexican Diplomatic Corps, and regulating the rights and duties of the diplomatic personnel. For Executive Regulations, see Diario Oficial Nos. 42, 43, 84, February 18, 20, Apr. 10.

Ex. Decree Jan. 17, 1922 (D. O. No. 19, Jan. 23), amending the Water Rights Tax.

Congressional Decree Jan. 2 (D. O. No. 21, January 25), approving the Conventions of the Pan-American Postal Union, at Buenos Aires, Aug. 25, 1921.

Exec. Resolution, Jan. 18 (D. O. No. 22, Jan. 26), abolishing the requirement of passports for U. S. citizens.

Exec. Regulations, Jan. 26 (D. O. 24, Jan. 28), for the issuance etc. of bonds of the *Public Agrarian* debt.

Exec. Resolution, Jan. 19 (D. O. 31, Feb. 6), that until the Legislature has passed regulations of Art. 27 of the Constitution, foreigners in possession of land within 100 kilometers of the frontiers and 50 kilometers of the coast, shall not be disturbed. Exec. Res. of Oct. 2 (D. O. No. 38, Oct. 18) permitted registry of deeds etc. in prohibited zone.

Law of Public Defenders, Jan. 14 (D. O. 34, Feb. 9). They are appointed by the Supreme Court (Art. 2); cannot practice privately in the federal courts (Art. 11). For the *Supreme Court Rules*, Sept. 25th, see Diario Oficial No. 45, Oct. 26.

Exec. Decs., Jan. 9, Sept. 25 (D. O. No. 58, March 10; No. 32, Oct. 10), condoning certain surtaxes on mines.

Exec. Dec., Jan. 17 (D. O. 67, March 21), amending the Mining Tax Regulations.

Exec. Dec., Dec. 27, 1921 (D. O. 76, March 31), amending the Inheritance Tax Law. The tax ranges from 2% to 10%. $500 only is exempt.

Congressional Decree, Dec. 10, 1921 (D. O. 88, April 18), abrogating Public Lands (*ejidos*) Law of

Dec. 28, 1920 and giving the Executive authority in Agrarian matters. In accordance therewith, Executive Regulations were issued, April 10, 28 (D. O. 88, April 18, and No. 12, May 16). See also, Decree May 29 (D. O. No. 42, June 20).

Exec. Decs., May 17, Dec. 13 (D. O. No. 15, May 19; No. 95, Dec. 28), levying special stamp tax on petroleum and its derivatives.

Exec. Regulation, May 1 (D. O. 22, 23, May 27, 29), General Police Regulation for Ports.

Exec. Decrees and Regulations, June 19, 26, Oct. 18 (D. O. No. 54, 55, 47, July 4, 7, Oct. 30), imposing a mortgage Tax of 1% per annum. The tax is applicable to existing mortgages as well as future ones.

Exec. Decree (D. O. No. 21, Sept. 27), promulgating the Universal Postal Convention signed at Madrid Nov. 20, 1920.

Congressional Decree Sept. 29, 1922 (D. O. No. 24, Sept. 30), approves the "De la Huerta" Financial Plan of June 16, 1922, entered into with the International Bankers' Committee, and authorizes the Executive to arrange the details and enter into such supplementary contracts as may be necessary to carry it out.

Exec. Decree, Oct. 11 (D. O. No. 45, Oct. 26), establishing a federal tax of one per mil on real estate. Rural properties less than 10 hectares in area are exempt (Art. 3).

Exec. Regulations, Sept. 28 (D. O. Nos. 63, 64, Nov. 17, 18), for registry of vessels under the Mexican flag. In effect, Jan. 1st, 1923, pursuant to Exec. Decree, Nov. 4 (D. O. No. 61, Nov. 15).

Exec. Decree, Oct. 11 (D. O. No. 64, Nov. 18). Port, Navigation, registry etc. fees on foreign and national vessels.

Exec. Resolution, Nov. 27 (D. O. No. 76, Dec. 4), creating a Permanent Registry of laws, decrees, regulations, circulars and other federal provisions of general observance. P. J. E.

Petroleum and Mining Industries

As in past years, the decrees, regulations, and circulars issued by the Executive and the Departments relative to these two important industries, which between them bear the burden of paying about one-sixth of the total revenues of the federal government, have been so numerous and so varied that a detailed list of them would be wearisome to anyone not directly interested in these industries in Mexico. It may be of general interest, however, to note the modifications made in the Decree of May 24, 1921, establishing a tax on the production of petroleum, and in the Decree of June 7, 1921, establishing a tax on the exportation of petroleum. These two decrees superseded the various federal taxes on oil imposed by the Carranza régime.

The Decree of May 24, 1921, was superseded by the *Decree of May 17, 1922* ("Diario Oficial," No. 15, May 19, 1922), which now regulates the special stamp tax on petroleum produced in Mexico. Under the fourth paragraph of article 27 of the Constitution of 1917, the federal government has always maintained its exclusive right of levying taxes on oil, to the exclusion of any such right in the States of the Federation. The various bills or "proyectos de ley" drafted for the purpose of enforcing and regulating the fourth paragraph of article 27, and debated in the Congress in the last four years, have included a provision assigning a certain percentage of federal revenues from oil to the States where such oil was produced or refined, as compensation to the States and municipalities for the detriment caused to agriculture, horticulture, and cattle raising by the oil industry, it being a matter of common knowledge that in the United States as well as in Mexico farmers and ranchers who derive a revenue from oil on their lands neglect their primary vocations, and that the farmers and ranchers in the vicinity who do not derive a revenue from oil cannot compete in the matter of wages with the oil companies. However, none of the many bills presented to the Congress has been enacted into law, with the result that the States having petroleum resources grew restive in view of the fact that they were carrying the burden of one of the most important industries in the country and were deriving no revenue therefrom.

On September 13, 1922, the State of Vera Cruz issued decrees number 376 and 377 imposing: (a) a tax of two per cent on the value of the crude oil produced within its territory; and (b) a tax of five per mill annually on oil refineries located within its boundaries. These decrees were immediately objected to by the oil companies and by the federal government, and finally, early in December, 1922, Governor Tejeda of Vera Cruz was called to Mexico City to confer with President Obregón, Secretary of Finance de la Huerta, and other officials of the central government. A compromise was effected, resulting in the addition to the Decree of May 17, 1922, of a new article reading as follows: "Art. 12. Five per cent of the revenue derived from the tax established by the within decree shall be turned over to the States, taking into consideration the location of the wells with respect to the tax on crude petroleum, and the location of refineries with respect to the tax on petroleum derivatives. The Department of Finance shall issue the necessary orders to this effect." The foregoing article 12 was enacted by virtue of the Decree dated December 13, 1922, published in the "Diario Oficial" of December 28, 1922 and in the "Revista de Hacienda" of December 25, 1922. In view of the above-mentioned statute, the State of Veracruz will doubtless abrogate its decrees No. 376 and No. 377 of September 13, 1922.

The Decree of June 7, 1921, establishing an exportation tax on petroleum, was amended by the Decree of February 12, 1922, which permitted the tax to be paid either in "national gold" or in bonds of the Public Debt. This was for the very obvious purpose of reestablishing the credit of the nation by causing wholesale purchases of bonds which were then selling in the market at about forty per cent of the par value. On June 16, 1922, the Lamont-de la Huerta agreement was signed in New York, and in view thereof a Decree was issued on August 8, 1922, reducing the tariff set forth in the Decree of June 7, 1921, to forty per cent of the rates therein contained. The Lamont-de la Huerta agreement was approved by the Congress of Mexico and promulgated by virtue of Decree dated September 29, 1922. Circular No. 24 was issued by the Department of Finance on September 5, 1922 ("D. O." No. 7, Sept. 9, 1922), providing for the method of payment of taxes pursuant to the decree of August 8, 1922. Another Circular of the Department of Finance, No. 49 dated November 30, requires the payment of taxes pursuant to the Decree of August 8, 1922, to be made in "national gold" and paid into the National Bank of Mexico for account of the General Treasury of the Nation.

Organic Law of Art. 27 of the Constitution

The draft of a proposed Petroleum Law was in-

corporated in the report dated Mexico City, December 7, 1922, and presented by the Joint Petroleum Committees of the Thirtieth Congress. This report was published in full in "El Universal," Mexico City, December 12, 1922. The Joint Committees reject the principle of denouncement which formed the basis of petroleum claims in the bill proposed to the XXIX Congress, and substitute therefor the principle of the concession-contract. In most other respects there is nothing of novelty in this new draft of a proposed Petroleum Law the provisions of which have engrossed the attention of Congresses, Committees, cabinets, statesmen, politicians, economists, lawyers, and the press since February 5, 1917. The draft of December 7, 1922 will probably meet the same fate as similar projects in the past—the limbo of ineffectual acts and futile gestures.

Statutes relative to Merchant Marine

Police Regulations in the Ports: *Reglamento General de la Policia de los Puertos,* issued on May first, 1922, by the Section of Merchant Marine, Bureau of Ports, Lighthouses and Merchant Marine, Department of Communications and Public Works; published in the Diario Oficial, No. 22, May 27, 1922. These Regulations were approved by Executive Decree of May 8, 1922; Diario Oficial, No. 56, July 6, 1922.

Register and Matriculation of Ships: *Reglamento para el Abanderamiento y Matricula de los Buques Mercantes Nacionales,* dated September 28, 1922, published in the Diario Oficial of Nov. 17, 1922. These Regulations abrogate the "Instrucciones para el Abanderamiento, Matricula y Registro de los Buques Mercantes Nacionales" issued on January 30, 1918.

Taxes, Imports and Duties: *Decreto* de 17 de Mayo de 1922 (Diario Oficial, No. 23, de 29 de Mayo de 1922) que establece neuvas Tarifas para el cobro de Derechos de Tráfico, Patente de Navegación, Matrícula y Registro de Buques Nacionales y de Arqueo.

The foregoing Decree of May 17, 1922 was abrogated by the *Decree* of October 11, 1922 (D. O., Nov. 18, 1922), on the same subject. This decree of Oct. 11, 1922, increased the rates, and was the subject of much adverse criticism from the press, ship-owners, and chambers of commerce in the various ports.

Legislation, 1923

Executive Decree, of January 10, 1923, (Revista de Hacienda, Jan. 2) and revised by new Decree of same date (Revista, of February 5, 1923), approves Regulations for the issuance of Federal Bonds in the sum of Pesos 20,000,000, for the payment of the amounts deducted from the salaries of public officials and employes, during the period from December, 1916 to September, 1920; such Bonds to be delivered to the creditors in liquidation of the amounts due, and to be redeemed in stated proportions by drawings to be held bi-annually.

Executive Decree-Law, of January 3, 1923 (Revista de Hacienda of Jan. 22), established an annual Federal impost on the gross earnings of railroads, express companies, sleeping and dining cars, and other enterprises related to railway service and dependent thereon. The rate of the tax is fixed at 10% per annum, payable by special revenue stamps.

Executive Decree-Law, of January 2, 1923 (Revista de Hacienda of Jan. 29), makes extensive modifications in the tariff duties on imports.

Executive Decree-Law, of January 2, 1923 (Revista de Hacienda of Jan. 29), provides for the manner of effecting payment of taxes on tobacco, and imposes upon foreign manufactured tobacco, made up in a form to resemble domestic product, a tax double the amount of that on the domestic article.

Executive Decree-Law, on January 17, 1923 (Revista de Hacienda of Jan. 29), imposes a new system of payment of internal revenue tax on all kinds of alcoholic beverages, the tax to be paid in advance by special revenue stamps affixed to the bottles. The declared purpose is to prevent frauds on the Treasury by evading payment of the tax.

Executive Decree-Law, of January 24, 1923 (Revista de Hacienda of Feb. 5), for the purpose of favoring the national production, doubles the tariff rates on the importation of rubber tires.

Executive Decree-Law, of January 24, 1923 (Revista de Hacienda, Feb. 5), amends the Mining Tax Law of June 27, 1919, by directing that the amount of the "progressive tax, above the normal rate" provided by that law, shall be paid to the local authorities of the places in which the respective mining properties are located, to be used by them exclusively for local improvements of providing water supply, the opening and upkeep of local roads, and schools.

Executive Decree-Law, of (date blank) (Revista de Hacienda of Feb. —), extends until April 30, 1923, the time for the filing of claims by nationals and foreigners, for damages caused by the Revolution, as provided for by the Decree of August 30, 1919.

Law of Congress, promulgated in Decree of January 20, 1923 (Revista de Hacienda, Feb. 19), is of capital importance for Mexico. It creates a "single bank of issuance," or only bank authorized to issue its circulating notes, under the name of "Bank of Mexico." The initial capital is $25,000,000 (pesos), with authorized capital up to $100,000,000 (pesos). Of this capital the Federal Government will subscribe and hold 51%, and to that extent share in its profits, the Bank being in form an ordinary "sociedad anónima" or corporation. The Board of Directors is to be elected by the remaining 49%; but with the limitations that the Secretary of the Treasury shall always be elected President of the Board; that the "Comisarios" or managers of the Bank shall be appointed by the Federal Government; and that the Government shall have the right to vote in the resolutions of the Board, when concerning certain specified subjects. The Government reserves the right, after fifteen years, to acquire the remaining 49% of the stock at the book value of the balance sheet. The notes issued by the Bank are not legal tender, but of entirely voluntary circulation. As a compensation for the right to issue circulating notes, the Bank shall pay to the Government annually, on the daily balances of productive circulation, an interest which shall be one-third of the rate of discount of the Bank. The amount of bank notes to be issued for circulation shall never exceed double the amount of cash on hand in gold and in metal bars. The Bank is obliged to pay to the Government the amount of all its notes which are not presented by the public for payment, and the Government assumes their payment.

J. W.

Nicaragua

Legislation, 1922

Legislative Decree No. 21, Feb. 13 (La Gaceta No. 47, February 27), declares null and void Art. 4 of the Executive Resolution of May 30, 1921, in the part restricting the franking privileges of representatives to

Congress (Art. 1). Senators and Deputies shall have the franking privileges of the mails, telegraphs and telephones to the same extent as the President and Cabinet Ministers (Art. 2). Whenever pursuant to Art. 87 of the Constitution, the power to legislate in respect of Police, Fomento, Charity and Public Instruction is given to the Executive, it shall be understood the Executive cannot repeal or amend laws previously passed by the Legislature, unless such authority is expressly given in the enabling Act (Art. 3).

Legislative Decree No. 9, Jan. 19 (La Gaceta No. 21, Jan. 26), Consular invoice fees on parcels post packages.

Legislative Decree No. 31, Feb. 21 (La Gaceta No. 46, Feb. 21), on Port dues. P. J. E.

Panama

1. Passports.—The President on January 18, 1922, issued a decree to the effect that every Panamanian is entitled to receive gratuitously a passport from the Ministry of Foreign Relations or from the diplomatic agents and consuls of Panama in foreign countries. The applicant must furnish identification such as a certificate from the civil registry of individuals or a certificate of baptism. In case these documents are lacking he must be able to prove his identity and nationality by competent witness. The passports are only valid for two years, but may be renewed.

2. Change in Law Degree.—The graduates of the three-year course of the law school will receive the degree of bachelor of law and political science hereafter instead of bachelor of law.

Bibliography

Panama-Costa Rica boundary controversy. Opinion given by Dr. Antonio S. de Bustamente, Panama, National Printery, 1921, p. 21, 8°.

W. S. P.

Peru

Legislation, 1921

Law 4,433, Dec. 6, 1921 (El Peruano I, 87, April 19, 1922), declaring free of all local municipal or regional taxes the exploitation and consumption of peat (turba) for use as fuel.

Law 4,460, Dec. 30, 1921 (El P. I. 96, April 29, 1922), creates a commission to revise the Penal Code and the Code of Criminal Procedure.

Legislation, 1922

Law 4,452, Jan. 2 (El P. I, 92, April 25). *Oil Law.* Deposits of petroleum and hydrocarbons in whatever condition found, are national property. The Executive Power can only grant concessions of petroleum and analogous hydrocarbons in the form prescribed in this law; by analogous hydrocarbons there being understood natural gas and all liquid, pasty or solid products of chemical composition similar to petroleum, with the exception of asphalt, asphaltic rock and bituminous schists (esquistos), which deposits remain subject to the provisions of the Mining Code (Art. 1). Concessions are obtained upon application to the Ministry of *Fomento,* accompanied by a deposit of cash or bonds (Art. 2, 17). Art. 33 of the Mining Code is amended, reorganizing the "Mining Council" (Art. 3). The unit of measurement for claims (*pertenencias*) is 40,000 square meters (Art. 4). Concessionaire Companies are subject as to their constitution and functioning to the provisions of the Commercial Code; they shall have legal domicile in Perú and a duly authorized representative in Lima (Art. 7). Foreigners may not acquire or possess oil claims 50 kilometers or less from the frontiers (Art. 9). Contracts by concessionaires for exploration or working, with foreign governments or enterprises or individuals associated or related to them, are prohibited; violation of the prohibition forfeits the concession (Art. 9). Assignment requires consent of the Government (Art. 10). Controversies are within the exclusive jurisdiction of the courts and authorities of the Republic (Art. 11). Arts. 7, 93 of the Mining Code are limited; petroleum rights may only be acquired by special concession (Art. 13). Concessions heretofore or hereafter granted are subject to expropriation, when the security of the State so requires (Art. 16). The area of a lot concessioned shall not exceed 15,000 pertenencias at the coast, 20,000 in the highlands (Sierra), 30,000 in the forest regions (montaña); annual exploration tax is 1 sol, coast; 40c, sierra, 20c montaña, per pertenencia; term for exploration 2 to 4 years renewable for two years more in discretion of the Executive (Art. 18); during term of exploration, concessionaire is entitled to the products, subject to a royalty of at least 6 to 10% according to location (Art. 25). During the exploration period, concessionaire has exclusive rights to obtain exploitation concession for the whole or part of the zone explored (Art. 25). Exploitation concessions shall be granted for an indefinite time, for one or more lots, explored or not, up to 1,000 pertenencies each (Art 28). The annual tax is £1 (Peruvian) per pertenencia, until oil is produced: upon production a tax is payable on a sliding scale ranging from 50c per pertenencia to 9 soles: for sierra and montaña, one half thereof (Art. 29), in addition to a royalty of at least 6 or 10%, according to location (Art. 31). Law 1,435 is applicable (Art. 30). Exploitation Companies must offer at least 25% of their stock to the State or to Peruvian capitalists (Art. 38). Assignments are subject to a tax of 5% on the price of transfer in addition to the *alcabala* tax (Art. 39). The export tax on petroleum is not to be increased for 20 years (Art. 40). Easements and right of condemnation are granted (Arts. 41, 42). Pipe lines are to be in effect public carriers, and refineries are also for public service if they have surplus capacity (Art. 45).

Law 4,464, Jan. 13 (El P. I. 97, May 1). Railroad enterprises which prior to the going into effect of Law 2,938, had granted rebates or special privileges in any form, are given a term of two years within which to annul the same.

Law 4,480, Jan. 24 (El P. I, 103, May 9), increasing *ad valorem* import duties.

Law 4,471, Jan. 27 (El P. I, 100, May 4), authorizing the coinage of silver currency to the amount of S. 7,045,932 and containing other provisions as to the currency, etc. Silver money is legal tender only up to 100 Soles (Art. 4).

Law 4,494, Feb. 13 (El P. I, 112, May 18). Only certified copies of pending judicial and administrative proceedings, and not the originals, shall be admissible in evidence.

Law 4,498, March 1 (El P. I, 114, May 20), fixing an export tax of 3.50 soles per metric ton on petroleum and its derivatives. Such tax shall not be

increased for 20 years. Laws 2,425 and 2,444 are repealed.

Law 4,500, March 9, 1922 (El Peruano I 61, March 17), creating and organizing the Reserve Bank of Perú (Banco de Reserva del Perú).

Law 4,504, March 23 (El Peruano I, 117, May 26), on the organization of the Regional Legislatures, pursuant to Art. 140 of the Constitution. They are 3 in number, North, Centre and South (Art. 1). The number of deputies can only be changed by constitutional amendment (Art. 2). They have power to legislate in regard to specified local matters (Art. 10). They meet yearly on the 29th of May and are in session for 30 days (Art. 13). Bills are subject to approval by the President; in case of his veto, within 60 days, the National Congress may override (Art. 18).

Law 4,510, March 24 (El Peruano I, 119 May 29), authorizing the Executive to grant modifications in contracts with electric light and power companies, including exemption from import duties for 5 years, and exoneration from other taxes.

Exec. Decree, April 5 (El Peruano I, 1,227, June 1), authorizing imposition of fines on violators of the constitutional provision against gambling.

Exec. Decree, May 15 (El Peruano I, 138), prescribing rules for wireless licenses.

Exec. Decree, Aug. 26, 1922 (El Peruano II, 60 Sept. 15), appoints a Commission to draft reforms in the Civil Code of 1852.

Arbitration Protocol, and complementary Act, signed at Washington July 20, 1922, with Chile (published in El Peruano II, 63, Sept. 19), were ratified by the Peruvian Congress, Sept. 12 (El P. II, 58 Sept. 13).

Law 4,524, Sept. 19 (El Peruano II, 79, Oct. 7), extending the emergency Rent law (No. 4,226) to December 31, 1923.

Law 4,528, Sept. 29 (El Peruano II, 102, Nov. 6), repeals Art. 1,347 of the Code of Civil Procedure, and prescribes the cases for the exercise of coercive power of officials in the collection of taxes etc. due the State. After notice, the administrative authorities may attach the property or income of the debtor (Art. 4), which may then be judicially sold (Art. 5).

Exec. Decree Nov. 18 (El Peruano, No. 136, Dec. 18), on times for procedure in mining matters.

P. J. E.

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Salvador

1. Pan-American Postal Conventions. — The President, on April 26, 1922, signed the legislative decree, originating in the Congress of Buenos Aires of 1921, ratifying the following American postal conventions: Principal convention, its protocol and regulations; the parcel post convention, its protocol and regulations, and the postal money order convention.

2. International Opium Convention.—On May 24, 1922, the National Assembly ratified the Hague International Opium Convention and final protocol. The decree was signed by the President on May 29, 1922.

3. Treaty with Honduras and Nicaragua.—In order to remove much of the unrest in Central America during recent years, the Presidents of Honduras, Nicaragua and Salvador, on August 20, 1922, signed a treaty aboard the U. S. S. Tacoma in the presence of the three United States Ministers to those countries. The treaty provides that no one of the high contracting parties shall permit any political refugees from either of the other states to prepare in its territory any armed invasion of either of the other two states. In case any one of the states should be actually invaded from one of the other two signatories, the Government of the state where the invasion was planned must immediately send forces to the disturbed frontiers for the purpose of cooperating, within its own territory, in re-establishing normal conditions. Further, all agree that if not in conflict with their respective constitutions, they will expel from their territory the guilty leaders of such invasions when requested to do so by the invaded state. Such expulsion shall be made of any persons committing such offenses before the signing of this treaty. The treaty also stipulates that neither political refugee, nor any of the persons guilty of inciting such invasions, will be accepted into the military forces of either contracting party.

It is also provided, for the purpose of promoting a more perfect Central American Union, that a conference of the five Central American Republics shall be called. (This conference was held in Washington, D. C. early in December of last year, and representatives of all five countries were present.)

Another feature of this treaty was that as an experiment the Presidents of Nicaragua and Salvador should endeavor to secure from their respective governments the establishment with the other of free trade in natural products and goods manufactured from their own raw materials. The contracting parties also agree to the future arbitration of all disputes over boundaries, interpretation of treaties, or any other matter of dissension between them.

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Santo Domingo

Legislation, 1922

Executive Order No. 714, Jan. 31 (Gaceta Oficial No. 3,296, Feb. 4), amending Art. 60 of the Notarial Law. Notaries may only state in deeds etc. that property is free of incumbrances upon a certificate of the Conservator of Mortgages to that effect and of the Treasurer of the Republic that all taxes have been paid: such certificates must be annexed to the Protocol.

Executive Order No. 715, Jan. 31 (Gaceta Oficial 3,296, Feb. 4), amending Executive Order No. 649 and the Revenue Law (Ley de Hacienda), Art. 40.

Executive Order No. 716, Jan. 31 (Gaceta Oficial 3,296, Feb. 4), amending Art. 51 of Executive Order No. 282, Real Property Tax.

Executive Order No. 718, Feb. 15 (Gaceta Oficial 3,300, Feb. 18), Amendments to the Insolvency Law. See *infra*, Exec. Order No. 759.

Executive Order No. 735, March 28, 1922 (Gaceta Oficial No. 3,323, May 10, Text in English and Spanish), authorizing the issue of $6,700,000 Dominican Republic 20 year 5½% Customs Administration Sinking Fund Gold bonds, of a total authorized issue of $10,000,000.

Executive Order No. 738, April 24 (Gaceta Oficial No. 3,320, April 29), amends Executive Order No. 664 as to the jurisdiction of municipal judges (*Jueces Alcaldes*).

Executive Order No. 740, May 5 (Gaceta Oficial No. 3,322, May 6), amending Executive Order No. 180, regulating the sale of liquor to soldiers in uniform.

Executive Order No. 745, May 19, 1922 (Gaceta Oficial No. 3,327, May 24), repeals Executive Order No. 334, of Sept. 30, 1919.

Executive Order No. 750, May 27 (Gaceta Oficial No. 3,330, June 3), amends Art. 38 of the Insolvency Law, Exec. Order No. 699. See *infra*, Exec. Order, No. 759.

Executive Order No. 751, June 5th (Gaceta Oficial No. 3,331, June 7th), amends Art. 91 of the Police Law of March 27th, 1911, prohibiting fishing by explosives, narcotics, etc.

Executive Order No. 758, June 13 (Gaceta Oficial No. 3,338, July 1), School Tax Law, amending (and changing title of) Exec. Order No. 282, Law of Property Tax.

Executive Order No. 759, June 13, 1922 (Gaceta Oficial 3,340, July 8—text in both English and Spanish), Insolvency Law, repealing (Art. 120) "all laws or part of laws in conflict herewith." Article 1 contains a definition of terms. CHAPTER I (Arts. 2-20) provides for *"simple suspension of payments"* upon the voluntary petition to the Court of Commerce of a "debtor" (meaning, Art. 1, a "commercial debtor"), accompanied by a schedule and proposal for composition with creditors. A creditors' meeting is then called by the judge (Art. 6), ordinarily upon not less than 20 or more than 30 days notice (Art. 9), meanwhile an injunction issuing against the debtor disposing of his property and suspending executions (Arts. 6, 8). The following are priority claims: expenses of administration, funeral expenses, taxes, assessments and Government commune claims, personal services within 60 days not in excess of $100 for any claimant, or $500 for all; other priority claims under existing laws. Arts. 549 of the Code of Commerce and 2,101 of the Civil Code are amended (Art. 11).

CHAPTER II, (Arts. 21-36) provides for *"insolvency"* upon the voluntary petition of an "insolvent 'debtor' (see *supra*) in good faith." The chief characteristic of "insolvency" is the surrender by the debtor of all his property, and the appointment of an assignee, and of a Referee (see *infra*). The consequent creditors' meeting may appoint (Art. 25) a special Assignee *ad hoc* in lieu of the Official Assignee. Compositions with creditors are also permissible in insolvency (Art. 27). In case of failure of composition, liquidation is entered upon (Art. 35). A discharge is granted if the debtor is not blameworthy (Art. 36), but may be annulled for cause (id.).

CHAPTER III, (Arts. 37-55) provides for *"bankruptcy,"* in which the insolvent condition is blameworthy, and no discharge granted. The following are among the enumerated acts of bankruptcy; departure with intent to defraud creditors; within the statutory period of three months, with intent to defraud, obtaining goods or money on false pretenses or making a fraudulent transfer; making payments or transfers when knowingly in a state of insolvency; unlawfully filing a petition for simple suspension of payments and, generally, fraudulent acts or illegal acts in connection with or in the course of petitions or proceedings for suspension of payments or insolvency or failure to institute the same, e. g. such as hiding books, false entries, concealing assets; extravagant expenditures either personal or in business or unjustified losses; default in payment of due obligations or in fiduciary obligations within three days after demand; suffering unreturned attachments; conviction of robbery, deceit, abuse or confidence, counterfeiting or forgery (Art. 37). Any creditor may petition (Art. 38). The statutory period for unlawful preferences is 60 days (Art. 41). An adjudication may be had within 6 months after a merchant's death (Art. 55).

CHAPTER IV. *Referees and Assignees* (Arts. 56-65). An Official Referee (*Relator*) and an Official Assignee (*Depositario*) is appointed for each District by the Executive Power from a list of three persons designated by the Chamber of Commerce (Art. 56). Creditors may however appoint special assignees for particular cases, the Official Referee acting as temporary receiver. Assistants may be appointed by the Judge (id.).

CHAPTER V. (Arts. 66-68). Affixing of Seals. Breaking of Seals, Inventory, etc. CHAPTER VI. (Arts. 89-91). Tariff, Fees and Costs and Forms.

CHAPTER VII. (Arts. 92-98). *Proofs of Claims.* Sworn proofs in writing must be filed with the Assignee (Art. 92). Creditors who have received a preference may not file proofs of claim (id. K.). Bankruptcies are either simple, punishable as a misdemeanor, or fraudulent, punishable as a crime (Art. 93). The Referee has power, with the approval of the Prosecuting Attorney (*Fiscal*) to order the arrest of any person charged with an offense punishable under the law (Art. 94). The Board of Creditors may permit the debtor to continue the management of his business, subject to the intervention of a Controller appointed by it (Art. 95). Discharge may be applied for after 3 months, and not later than one year, after adjudication of insolvency. Objections may be filed by creditors (Art. 96).

CHAPTER VIII. (The English text of the law is erroneously numbered IX). (Arts. 99-120.) General Provisions. Merchants who do not keep books, or who keep them irregularly, shall not enjoy the benefits of simple suspension or insolvency (Art. 106). Proceed-

ings lie against or at the instance of partnerships or corporations (Arts. 111, 112). The Secretary of Justice and Public Instruction, to carry out the purposes of this law, shall issue rules and regulations which shall have the force and effect of law when approved by the Executive (Art. 117). All laws or parts of laws in conflict with this law are repealed (Art. 118).

Executive Order No. 778, Aug. 1 (Gaceta Oficial No. 3,348, Aug. 5), amends Executive Order No. 719, the Law of Internal Revenue Sales Tax.

Executive Order No. 778, Aug. 30 (Gaceta Oficial No. 3,356, Sept. 2), reestablishes the Provincial Governments suspended by Executive Order No. 749.

Executive Order No. 790, Sept. 1 (Gaceta Oficial No. 3,357, Sept. 6), amends the Mortgage Registration Law of June 21, 1890 as amended by Executive Order No. 665.

Executive Orders Nos. 791, 792, Sept. 5 (Gaceta Oficial No. 3,358, Sept. 9), revoke Executive Orders Nos. 394 and 578.

Executive Orders Nos. 793, 794, Sept. 8 (Gaceta Oficial No. 3,359, Sept. 13), reestablish certain courts of First instance, suppressed by Executive Order No. 595, and the Court of Appeals of La Viga, amending article 31 of the Judiciary Law of June 2, 1908.

Executive Order No. 797, Sept. 12 (Gaceta Oficial No. 3,360, Sept. 16), revokes Executive Order No. 450 and provides civil service rules.

Executive Order No. 799, Sept. 15 (Gaceta Oficial No. 3,360, Sept. 16), amends the Land Registration Law, Executive Order No. 511.

Executive Order No. 800, Sept. 15 (Gaceta Oficial No. 3,360, Sept. 16). Law of Dominican National Police, amending a number of prior laws and Executive Orders. See also Executive Order 801 (id. Id.).

Executive Order No. 805, Sept. 28 (Gaceta Oficial No. 3,364, Sept. 30), continues in force subject to the action of the Legislature, the Law of Land Registration, Executive Order No. 511 and amendments.

Executive Orders Nos. 809, 810, Oct. 9, 10 (Gaceta Oficial Nos. 3,368, 3,369, Oct. 14, 18), amend Executive Order No. 800, the Organic Law of the National Dominican Police.

Executive Order No. 819, Oct. 20, 1922 (Gaceta Oficial No. 3,373 Nov. 1), regulating the use etc. of firearms, munitions and dangerous weapons.

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Italy

Legislation, 1921 and 1922

The Italian Legislation of 1921 and 1922 was largely occupied with internal economic and fiscal problems and in extending its government to the new provinces and in providing for the disabled soldiers or the families of those who died in service.

The concern for the soldier and his dependents went so far as to provide by the Act of Nov. 3, 1921, for the families living in the new Italian Provinces, including those who died in the Austrian and Hungarian services during the war.

The New Territories annexed as a result of the war presented legal difficulties that required a continuous stream of legislation and of decisions.

For Official Acts in the much disturbed District of Fiume, to qualify for admission in the Italian courts, they had to be properly authenticated. The Court of Appeal in Milano (74 Giur. 1922), considered it sufficient for the Acts of the local authorities of Fiume to be viséd by the Spanish Consul of that place, and again certified by a Spanish Consul located anywhere in Italy.

In 1921 and 1922, there were 123 Acts dealing directly with the newly annexed provinces. An idea of the character of this legislation may be had by the mention of a few of them: Petitions for War Damages in certain provinces have to be made to the Minister "delle Terre Liberate" (R. D. L., 9 June, 1921). The Stamp Tax upon objects of luxury, etc., was intended to cover the new provision (R. D., 16 June, 1921). The Penal Code and the Penal Procedural Code were extended (R. D., 23 June, 1921). A Production and Sales Tax was placed upon Coffee and its derivatives, and upon appliances for Electrical Illumination (R. D. L., 16 Nov., 1921). Provisions for and form of Oath for Government Officials (R. D., 22 June, 1922). Certain Provisions of the Commercial Code extended to cover the New Provinces (R. D., 6 August, 1922). Custom Duties suspended upon Hemp and Corn (R. D. L., 2 Oct., 1921). Hydro-electric Plants were encouraged (R. D., 24 Apr., 1921). For the facilitation of the transportation of War injured, invalids living in the new districts, also families of fallen soldiers (R. D. L., 16 July, 1921). Removal of Tax on Benzine and Mineral oils for use as combustibles (R. D., 8 Jan., 1922). Encouragement in the New Provinces of the organization of agricultural associations of the orphans of the War dead (R. D. L., 27 June, 1922).

The internal economic condition resulted in a mass of fiscal requirements and new taxation covering every additional possible revenue heretofore neglected. It was responsible for several embargo Acts like that of Dec. 20, 1920 (7 Lex. 12), which in two exhaustive lists enumerated among articles which were not to be imported, Fire Arms, Furs, Woolen Carpets, Automobiles, Artificial Flowers, Pianos, Playing Cards, Coffee, Cereals and Rice, and their flour, Preserved, Salted or Storage Meats, and among the forbidden exportations were Vegetables and Animal Oils, Molasses, Leaf Tobacco, Quinine, Cereal, Seeds, Macaroni, Fish, Meats of all kinds, Eggs, Paper, Money and Credit Paper, and Cheese.

These Embargo Acts subsequently were partially lifted, as the circumstances required, as in the Act of May 7, 1922, which provided for the temporary importation of Raw Material for the Iron and Steel Products, of Rice, Sugar, Glucose, Window Glass, etc., and of Raw Material for Textile Products.

By the Act of Aug. 31, 1921 (7 Lex. 674), Italy again permitted the naturalization of aliens, which had been forbidden during the War. Incorporations were encouraged for the developing of Water Power (L. 24 March, 1921). Fruit Culture was encouraged (L. 3

Ap., 1921). Pardon granted for certain political crimes (R. D. 13). Sale of Sugar for industrial purposes under control (D. Commis., 28 Feb., 1921). Restrictions upon sale of fruit lifted (D. Commis., 24 March, 1921). Indemnity provided for those injured in the Sicilian Sulphur Mines (R. D., 28 Apr., 1921). All Restrictions upon the use of paper and the size of newspapers were lifted (R. D. L., 3 Apr., 1921). Provisions made for the 6th Census (L., 7 Apr., 1921). Custom Duties laid upon importation of machinery, etc., into Somalia (R. D., 20 Oct., 1921).

In the reported Decisions, Marriage and Divorce were especially prominent. In "Procuratore, etc., vs. Sindaco, etc." (74 Giur. 1922) it was decided that a Marriage between Italian citizens, celebrated in Italy, could not be set aside by Divorce secured in one of the new Provinces (Trieste), even though procured from both the religious and civil authorities of such place, and procured in accordance with the requirements of the Austrian law and the Jewish Religious Rite involved, and even though obtained prior to the annexation of the province and following the Armistice.

A decision of the Court of "Cassazine" of Rome (73 Giur. 1921) held that the owner of the premises might acquire title of the fixtures attached if the union was such that it was impossible to separate them from the building without ruining them, and that this was not the case with respect to heating fixtures, even though they were a part of a central heating plant.

The "Cassazine" of Florence (73 Giur. 1921) held that in interpreting a contract, in the absence of fixed custom or legislation), the usages and customs prevailing in the place where the contract was executed, though local, must control.

J. P. B.

Spain

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P. J. E.

Switzerland

The year has been characterized by important constitutional and legislative activities in a wide diversity of fields,—political, economic, sanitary, international,—while not the least noteworthy feature is to be seen in ill-considered attempts on the part of certain groups of citizens to introduce conceptions of government so radical as to violate every wholesome standard of true democracy. These attempts although not finally sustained by the citizens at the polls, are, nevertheless, deserving of careful attention as illustrating present-day tendencies in political thought and purpose. The federal constitution in article 42 enumerates the various sources of federal revenues,—income from federal property, customs, postal and telegraphic income, powder monopoly, half of the military tax imposed by cantons and other cantonal contributions to national purposes. On September 13, 1921, there was transmitted to the federal chancery office at Bern on behalf of the socialist organization an initiative, supported by 87,500 signatures, seeking the amendment of the constitution by the introduction of an article to be known as 42 *bis* and providing as follows:

The Confederation shall lay a single tax an property to the end that the Confederation as well as the cantons and communes may realize their social tasks. Both natural and judicial persons are subject to the tax which shall, nevertheless, not touch institutions of specially federal or cantonal or communal character, such as the National Swiss Bank, the National Accident Insurance organization, the federal alcohol monopoly, etc. Property over eighty thousand francs in net value is taxable. (Debts may be deducted in computing the taxable amount.)

The proposed article comprises no less than nineteen paragraphs, and the tax to be levied increases from eight per cent on the first taxable fifty thousand francs. (Debts may be deducted.)

A motion of somewhat similar nature was made in the National Council on April 16, 1918, but the situation was met by Parliament through the passage of an act Feb. 14, 1919, proposing a constitutional renewal of the special war tax, and this act was sustained by referendum vote on May 4, 1919, with a majority of 30,700 against 165,000 and by twenty cantons against two. It is of no little importance to note that the socialist deputies openly favored this new war tax whose details were worked out in a communication of the Federal Council August 2, 1919, and ordered put in force by Parliament on September 28, 1920; the Federal Council, on December 6, 1920, promulgated an ordinance for its execution and it thus became part of the constitutional machinery (of. *Recueil Officiel* for 1920, pages 681, 833).

An elaborate system of taxation being thus already in force and, so far as can be ascertained, satisfactory in its results hitherto, it seemed plain enough to conservative minds that the new scheme proposed was oppressively cumulative in character and also essentially confiscatory in its aims. In the end it was decisively rejected in a referendum vote held on the evening of Saturday, December, 1922, and on the following day, Sunday, December 4, by a vote of nearly 7 to 1 against the measure. (Vote, 704,785 to 101,-057). Three other unsuccessful initiatives were also decided by the citizen voters during the year, the actual time of voting being the same for all three measures, i. e. June 11, 1921.—The federal constitution in Article 44, section 2 provides that "Federal Legislation shall determine the conditions through which foreigners may become naturalized as well as those through which a Swiss citizen may renounce his nationality in order to obtain naturalization in a foreign country." It was

sought to alter this clause by initiative petition sent to the Federal Council March 6, 1920, supported by nearly 60,000 signatures, the initiative proposing in place of the present constitutional clause a somewhat complex procedure whose outstanding feature was the requirement, on the part of the applicant, of a Swiss domicile of at least twelve years duration in the fifteen years preceding application for admission to citizenship.

In Switzerland admission to citizenship is essentially dependent upon *communal* will in the last resort since the applicant, though dependent upon preliminary approval by the Federal Council, and upon a concurrent approval by cantonal authorities, must be admitted to citizen rights in a *commune* before becoming a member of the Swiss body politic. The federal statute of June 25, 1903, touching the acquisition and renunciation of Swiss nationality provides in Article 2 (as modified by the statute of June 26, 1920) that an applicant for approval by the Federal Council must be armed with a certificate showing Swiss residence for at least 6 years during the 12 years preceding such a request. Plainly the proposed initiative sought to increase materially the already sufficiently complex character of admission to citizenship. Nevertheless the problem of foreign assimilation is a pressing one since in all parts of the country and especially in the cantons along the German borders, on the one hand, and in Canton Geneva on the other, the number of residents who are deprived of the formal privileges of citizenship is very great and creates an anomalous situation wholly undesirable in the conduct of both domestic and foreign affairs.

Quite different were the other two initiatives:—Article 70 of the federal constitution authorizes the expulsion from the country of foreigners compromising the domestic or external safety of the country; while Article 77 provides that members of the Swiss Council of States and of the Federal Council, as well as all office holders appointed by the latter, may not at the same time be members of the National Council. On the same 6th of March, 1920, already mentioned, a companion initiative was transmitted to the Federal Council proposing an alteration of Article 70 to read as follows: "It is the privilege and duty of the Confederation to expel from its territory foreigners compromising the domestic or external security of the country or the prosperity of the Swiss people: those persons being specially in view of this article who participate in anti-constitutional movements or in political enterprises calculated to disturb the friendly relations of Switzerland with foreign governments as well as the general interests of the national economy."

Again, on July 28, 1921, the committee of the Federated Union of office-holders, employers and workmen of the Confederation proposed a constitutional article replacing article 77 and reading as follows: "The deputies to the Council of States may not at the same time be members of the National Council. The same regulation shall apply to Heads of Service directly subordinate to chiefs of department in the Federal Council and also members of the general management and the district management of federal railways. Federal legislation may regulate the conditions through which other functionaries and employees of the Federal Administration and of Federal Railways may be members of the National Council." On June 11, 1922, these three initiative proposals were voted upon throughout the country and decisively rejected as had been recommended by Parliament when submitting them to a popular vote.

The proposal and rejection of these four initiative proposals illustrate in striking and complete manner the more important aspects of Swiss constitutional machinery. In the matter of the proposed property tax, Parliament had already worked out of its own motion a highly efficient economic measure amply adequate to meet the most pressing requirements of the moment and this measure, although a referendum vote was demanded against it, was sustained at the polls. In the proceedings on the subsequent initiative emanating from the ultra-radical and economically dangerous elements of the country the proposed measure was, nevertheless, repudiated so that here the citizen voters are seen confirming the economic wisdom of their representatives in Parliament as against irresponsible elements in their own ranks. In the three initiatives voted on June 11, 1922, the people declined to sustain measures plainly unnecessary from a constitutional standpoint and merely tending to introduce additional complexities into the existing constitutional machinery, already found ample to meet every reasonable requirement concerning the subjects in view.

The *Federal* penal code adopted February 4, 1853, and which must be carefully distinguished from the new *Swiss* penal code now being elaborated, was sought to be amended by Parliament January 31, 1922, through authority conferred by Article 64 *bis* of the Constitution adopted on popular vote 13th of November, 1898; the amendment, however, comprising a somewhat extensive text of penal legislation was rejected by popular vote September 24, 1922, by a vote of 376, against and 303,000 in favor of the amendment; the registered electorate at the present time amounts to 982,567.

Among the administrative and legislative acts of the year worthy of special notice is an ordinance of the Federal Council passed on February 2 and providing, in accordance with authority conferred by the general tariff act of October 10, 1902, for an increased tariff applicable to goods coming from states which either discriminate against Switzerland in any manner or openly accord it a treatment less favorable than that extended to others. Again, the subject of assistance to the unemployed (*allocation extraordinaire de chômage*) has received much attention especially in the domain of the watchmaking industry in Canton Neuchâtel. Hotel keepers, likewise, who have also suffered in consequence of the war, and especially those who have not been adequately reimbursed for the care extended by them to prisoners (*internés*) have received a merited share of federal assistance, this assistance having moreover embraced a wide circle of need comprising the payment of federal subsidies to associations and institutions devoted to the struggle against tuberculosis. An important act of this character was passed by Parliament, March 29, 1922, and a special ordinance on the same subject was issued by the Federal Council on August 17, 1922. A carefully compiled list of occupations coming within the reach of Federal assistance by reason of unemployment was published by the Federal Department of Public Economy, August 7, 1922. Early in the year, on February 13, the Federal Political Department at Bern had issued a general circular to the cantonal governments exhibiting the amounts allotted by Parliament to the very numerous (192 in all) Swiss relief societies all over the world.

This action suggests a useful pattern to be followed by every truly democratic government.

Soon after the above-mentioned tariff ordinance of the Federal Council, on March 22, 1922, there reached the Federal Chancellery an initiative petition supported by nearly 152,000 signatures demanding the remodeling of Article 29 of the Federal Constitution which is the present foundation of tariff legislation, the proposed new article to be deprived of the privilege of urgency as made possible by Article 89, section 2 of the Constitution. The proposed new constitutional article authorizes as low a duty as possible on foodstuffs and all objects necessary to life or to industry or to agriculture, while articles of luxury shall be subject to the highest duty; exportation taxation to be as light as possible; commerce along the national frontiers is to be favored and the referendum is to be applicable in all cases save to such measures or in such circumstances as Parliament may determine to be wholly exceptional. The great number of signatures supporting this measure evidences the interest taken in it. The iniative is drafted in French, German and Italian and follows in its general outline the existing constitutional article, No. 29, save that it seeks to strengthen it by withdrawing, save in highly exceptional circumstances, all tariff legislation from the protection of a supposed urgency and thus submitting it to an inevitable referendum.

On March 31, 1922, Parliament approved an international monetary treaty concluded December 9, 1921, supplementary to the celebrated international convention of November 6, 1885. Parliament has also ratified and published the universal postal treaty concluded at Madrid November 30, 1920, together with various annexes, the whole to be in force from January 1, 1922. Parliament has also ratified and published, April 7, 1922, a treaty of arbitration and conciliation concluded with Germany December 3, 1921. An important commercial treaty with Spain has been signed by the Federal Council; and Switzerland has made further provision for its lately increased number of foreign legations through purchase of permanent homes for them, in this respect setting an example which the United States would do well to follow in larger measure than it has hitherto done.

Elections to the National Council for the 36th legislature under the present constitution took place on October 29th, the term of the 35th legislature terminating on the Sunday preceding the first Monday in December, 1922. Throughout the country representatives were elected without recourse to a second voting. Among the deputies we find the names of Mr. Greulich of Zurich now 80 years of age and that of Rosselet of Neuchâtel who is 29 only.

This brief notice of Swiss constitutional and international aspects will easily demonstrate that the constitutional plan designed and well maintained by the most democratic of all existing governments tends to strengthen a belief in representative institutions since the results of recourse to a citizen vote (referendum) show that it is not merely the major but the sane sense of the citizens at large which is invoked to save the country at various periods. It is not ill-considered legislation or constitutional change attempted by its representatives at Bern which forms a peril, but it is the invasions of fundamental popular rights on the part of ultra-radical and essentially unpatriotic groups among the people which is to be feared; these groups are found in all countries at the present day. Nor should it be forgotten that Switzerland preserves the form and spirit of its institutions under the guidance of a Parliament whose acts are not subject to revision by courts but by the voters themselves; that is to say, an act of the people's representatives constitutes positive law and is to be received and enforced as such by all judicial courts being only subject to criticism by the electorate.

The rejection of the proposed property tax December 3 and 4, 1922, owed much of its inspiration not merely to its confiscatory character as already pointed out, but also to the practically important feature that as drafted the tax would scarcely produce over Fr. 35,000,000, an amount quite insufficient to finance the various philanthropic schemes under consideration including old age and sickness insurance, the relief of indigent widows, tuberculosis patients, incurables, etc. But the results of the referendum in this case have served to promote a determination throughout the country to surround the existing constitutional system by such additional restrictions as may make it increasingly difficult in the future on the part of irresponsible elements in the electorate to remold it along indefensible lines, and committees have already been formed for the purpose of organizing in the interest of such a movement, the matter having been formally brought before Parliament in the National Council Dec. 8 by a motion to thus revise Article 121 of the constitution, which at present regulates the practice of constitutional initiative.

An important statute has been passed by Parliament regulating telegraphic and telephonic correspondence, October 14, 1922, the referendum period for which (*Délai d'opposition*) will expire January 22, 1923, being 90 days subsequent to the formal promulgation of the statute by the Federal Council on October 25, 1922.

Parliament on October 13, 1922, passed a resolution (*arrêté fédéral*) to be submitted to vote on the part of the citizens and the cantons revising present legislation touching the manufacture and sale of alcohol, and on the same day issued a formal announcement that an initiative petition calling for a general reform of the federal administration having failed to sufficiently comply with existing law must be pronounced null and void (*est déclarée n'avoir pas abouti*). This initiative, it need scarcely be pointed out, belongs to the class of that on the property tax above noticed.

An initiative petition, also, has reached the Federal Council and has been by it laid before Parliament for subsequent action seeking to confer authority on communes and cantons to prohibit manufacture or sale of distilled liquor in their boundaries by a constitutional Article, 32*ter*, embodying the principle of local prohibition as contrasted with the existing federal monopoly.

It should be added that locally important constitutional changes in the cantons of Argau, Geneva, Ticino, Schwyz, Upper Unterwalden, have been approved and guaranteed by Parliament. On December 7, 1922 Parliament passed a copyright act (*Droit d'Auteur*) published on December 13th, the referendum period expiring March 12, 1923. G. E. S.

Our Indian Population

"The inference from the changes here noted is that the extinction of the North American Indian at no distant date, which so long has been confidently predicted, has been averted by increasing intermarriage; and that a considerable strain of Indian blood will remain."—*Census Monograph.*

REPORTS FROM JAPAN AND CHINA

Legislation in Japan for 1922 Authorizes Government to Insure Persons Exposed to Extraordinary Risks, and Deals with Railroad Subsidies, Reformatories, Public Employment Bureaus for Seamen and Other Subjects—Chinese Judge's Remarkable Confession—Extraterritoriality—Education—Comparative Law School

China

Second Postponement of Inquiry Re Extraterritoriality.—In this department of last year the Resolution of the Washington Arms Conference was quoted which provides for an international commission "to inquire into the present practice of extraterritorial jurisdiction in China." The Resolution required the commission to "be constituted within three months after the adjournment of the Conference" which was on February 6, 1922. Just before May 6, the Chinese government requested postponement for one year of the selection of its personnel, and now, before the expiration of the second year the Chinese Ministry of Justice has asked the Waichaiopu (Foreign Office) to request another postponement—this time until the autumn of 1924. The reason given for this request is "the unsettled state of the country," because of which the "necessary judicial reforms cannot be carried out speedily." The Ministry of Justice emphasizes "the momentous nature of the decisions which the commission will be called upon to make" and evidently recognizes the country's unreadiness to meet the tests which are likely to be imposed.

A Congressman's Findings.—The Honorable L. C. Dyer of Missouri, second ranking member of the House Judiciary Committee and author of the China Trade Act, spent some time in China early in the present calendar year, and, before leaving, gave out a statement of unusual interest, coming as it does from an avowed friend of the Chinese people:

> I find China in a condition of chaos, with civil war south of the Yangtsze, Szechuan in the west reported in turmoil and armed camps dominating all parts of China. In Peking I have met individually brilliant men and idealists but, possibly due to military interference, no real evidence of broad constructive endeavor to achieve in government affairs a unity of purpose to bind China together as a Nation.
>
> In China's relations to American business I find a lack of the spirit of reciprocity to respond to the goodwill which America extends to China.
>
> On the Yangtsze, steamers under the American flag have been repeatedly fired on by Chinese troops and hampered in their business operations because of Chinese official and military obstruction.
>
> In many parts of China the lives of foreigners are endangered by uncontrolled soldiery and those in the guise of brigands, culminating in the recent deplorable incident at Kalgan where Chinese soldiers under Chinese officers murdered an American citizen.
>
> I find China insolvent, due largely to the squandering of government funds in military adventures and the maintenance of demoralizing military forces. There appears to be a complete disregard of the obligations of China to American merchants and bankers.
>
> I find in Peking numerous representatives of American commercial and financial interests, maintained here merely for the purpose of endeavoring to collect debts owed in many cases for years by the Chinese government.
>
> I find on examination of some of the contracts that they were awarded by the Chinese government as a result of public tenders specifying final payment within a definite time after completion, delivery, and acceptance of goods. Such are examples of the obligations the Chinese government has failed to meet.
>
> Aside from unpaid bills for materials, China has borrowed money from important and influential American banking interests. Some of these loans are in default both as to principal and interest—and have been in default for some time. Americans cannot understand what China is thinking of to permit those defaults to continue unremedied.
>
> On the question of extraterritoriality I have not observed any convincing evidence of the existence of a judicial system which would warrant me in supporting in Washington any movement to abolish extraterritoriality, thereby entrusting the lives and interests of Americans in China to Chinese administration of justice.
>
> In frankly stating my impression of China as I see conditions today, I can assure you that China has the real sympathy and friendship of the American people. Without thought of infringement of China's sovereign rights she can obtain, against adequate pledges, financial assistance to pay off existing obligations and take in hand needed reforms to carry on her industrial development.
>
> To accomplish this China must be reunited by a government which will command and hold authority as representative of the will and interests of the people of this great country.
>
> I wish again to emphasize my good will and friendship for China, and that it is my purpose in Washington to do everything in my power to further the attainment of support to China so that the trade relations between our countries may be developed to the greatest possible extent.

An Unfortunate Incident.—Chief Judge Mei Yi-Kuo of the (native) Shanghai District Court absconded in January with, it is said, $40,000 of court funds. In a letter addressed to Judge Chu Hsein-wen of the Provincial Supreme Court, the former says:

> Unable to resist the temptation, I have committed a grave crime by converting a large amount of public funds to my own use. I have formulated many plans to save the situation, but I could not devise any satisfactory means whereby I could be saved from ruin and was compelled to leave Shanghai.
>
> Henceforth, I will be a criminal in the eyes of the public, the eyes of my own family and in society. Disloyal, unfilial, unscrupulous and unfaithful as I am, I realize that I am condemned forever for my crime. But throughout my life, I have ventured to be honest and straight. Who knows that one misdeed committed in an instant of adventure will ruin me for forever?
>
> The cause of it all was the confidence that the government had in me in allowing me to have possession of all the funds of the court. I was custodian of all the bank passbooks, seals of the court and other properties. I could draw all the money I wanted for public as well as private use without any restriction being placed upon me by any other person. This arrangement has caused my destruction. I have no way of redeeming myself.
>
> Of course, I alone am to blame for carrying out such a suicidal act. The agony is great when I realize that I have to be separated from my parents, wife and children and that by my act, an atmosphere of suspicion is created round the entire judicial system of the country.
>
> I wished to punish myself, but I could not think of any method. So I have resorted to the last refuge by leaving my office. At present, there is no one to function in my stead. It is important that some one should be appointed to the position at once.
>
> As to how my action can be amended, I shall leave to you for your consideration.

"Twenty Years in the Judiciary."—Under the above title the Far Eastern American Bar Association

has just issued a Bulletin which contains *inter alia* the following:

On October 22, 1902, Judge Charles S. Lobingier, now of the United States Court for China, was appointed a member of the Nebraska Supreme Court Commission—a body created by the legislature of that state to assist its court of last resort in clearing a badly congested docket. As this was the beginning of Judge Lobingier's judicial career, its twentieth anniversary was observed in Shanghai on the evening of October 23 (the 22nd being Sunday) with a banquet at the *Cercle Sportif Francaise*, initiated by the Far Eastern American Bar Association in cooperation with the other representative organizations in China, viz: the American Chamber of Commerce, the American Association of China and the American University Club. President Harding sent a despatch through the Secretary of State reading as follows:

"Judge Lobingier, Shanghai:

"On behalf of the President I take pleasure in expressing on this anniversary occasion his cordial felicitations and best wishes for a happy and successful administration of the important functions devolving on the United States Court for China. "Hughes."

Messages of congratulation were also received from the Premier of China, and from various parts of the world while the Chinese government, in recognition of Judge Lobingier's "services in bringing about closer friendly relations between China and the rest of the world, especially the United States," conferred upon him the decoration of the Chiao ho and the University of Soochow announced the awarding to him of the degree of Doctor of Jurisprudence.

The Toastmaster at the Banquet was Stirling Fessenden, Esquire, Dean of the American Bar in China.

C. S. L.

The Comparative Law School of China.—Seven years have passed since the announcement in these columns of the establishment of The Comparative Law School of China (Law Department of Soochow University) at Shanghai. These seven years have been filled with events of interest to students of jurisprudence. In some ways China has made progress toward judicial reform; many feel, however, that on the whole there has been retrogression rather than progress.

Throughout this difficult period The Comparative Law School of China has had a slow but steady growth. Starting with eight students in the fall of 1915, it registered eighty in the fall of 1922. Of the latter number fourteen were college graduates, which fact leads to the hope that it will soon be possible to raise the entrance requirements from two years of college work to college graduation. Of the twenty-four young men who have completed the three-year course and received the LL. B. degree, nine have gone to the United States for graduate study. Of those not going abroad, one has been with the Codification Bureau at Peking, where he has just finished directing the compilation of the Commercial Code, and another has achieved recognition as one of the leading members of the Shanghai Chinese Bar.

The China Law Review, a bi-lingual quarterly published by the students of The Comparative Law School of China under supervision of the faculty, is now beginning its second year, and is proving a successful venture. The policy of the Law Review has been said to be threefold: "First, to introduce the principles of foreign laws to China, and to acquaint foreign countries with the principles of Chinese law; second, to facilitate a comparative study of these principles; and, third, to extend widely in China knowledge of these principles as a preparation for legal reform.

The work of instruction has been largely carried on by American lawyers practicing at Shanghai, and by Chinese graduates of American law schools. The Hon. Charles S. Lobingier, Judge of the United States Court for China, is an advisory member of the faculty, and has rendered invaluable services to the school. In recognition of his services Soochow University will confer on him the degree of Doctor of Jurisprudence at the next annual commencement of the Law School.

The Advisory Council of the five large Mission colleges of East China has recently recommended that the school become the joint law college of the five colleges. If this recommendation is carried through, the staff of full-time teachers will be increased and the school otherwise strengthened. It is hoped that with the enlarged staff each full-time teacher will have time for research work. China offers splendid opportunities for investigation into the history and philosophy of legal institutions.

While the situation in China may appear gloomy and discouraging at the present hour, better times are ahead. Law trained men are more and more taking a lead in government affairs; the need for a separate and independent judiciary is being more and more recognized; the penitentiary system is being studied and improved; the Codification Bureau is still at work. A judicial system is a thing of extremely slow growth, and the masses must be educated as we go along. More and better law schools are needed. Sympathetic assistance from abroad will help a lot.

W. W. BLUME.

Japan

Legislation, 1922

Law No. 20, March 30, 1922, is a prohibition law which declares that no person under the age twenty-one shall purchase or procure any kind of alcoholic beverage for his or her own use. No penalty is imposed upon a minor person for a violation of this provision, but it holds parents or guardian responsible for their children or his ward. Furthermore, it holds a dealer's property subject to confiscation, where he sells liquor to a minor knowing his infancy and the use.

Law No. 24, March 30, 1922, provides the railroad companies a subsidy amounting to eight per cent of the actual cost of a road built in the Formosa Island. The total amount of subsidy allowed to the Island railroad for the year 1922 is 800,000 yen.

Law No. 29, March 30, 1922, is a health law for domestic animals. It requires an owner or custodian of the animals to file a report with a commissioner of health of domestic animals, where an animal is found suffering diseases. All unhealthy animals are to be taken care of under a supervision of the health department: without an order from it, no diseased animal is to be killed, nor can the remains be buried or cremated. It declares further that where an animal found in an unhealthy condition, while in transit, a report shall be made at the next station or the first port to which a ship is bound.

Law No. 31, April 11, 1922, is an amendment to the law governing manufactures of explosive gases, prescribing certain vessels and tanks which shall be used for the preservation of the gases.

Law No. 38, April 11, 1922, authorizes the government to establish and maintain public employment bureaus for seamen. The bureaus may be established from time to time where they are deemed necessary. A duly licensed person or corporation may engage in the business of employment agency, but no compensation or fee shall be charged for finding a position for a seaman.

Law No. 40, April 12, 1922, prescribes rules for a chamber of agriculture. It declares in part; where

two-thirds of all farmers in a district desire to organize and incorporate a chamber of agriculture, they shall file a petition and an article of incorporation with the government. Its objects shall be (1) encouragement of agricultural industry, (2) mutual benefit and convenience, (3) investigation and improvement, (4) introduction of new method and invention, (5) arbitration. By this act a local chamber of agriculture is subject to the Imperial Chamber of Agriculture, the central organization, and is created as a part and a member thereof.

Law No. 41, April 12, 1922, authorizes the government to establish courts of landlords and tenants. As the court is governed by the general rules, it does not seem to call for special attention, but the object of new courts seems to be to alleviate the district courts from overcrowded litigations.

Law No. 43, April 12, 1922, amends the juvenile law to the effect that no death penalty shall be imposed upon a person of the age under eighteen. The maximum penalty shall be imprisonment for ten to fifteen years.

Law No. 44, April 12, 1922, is an amendment to the law of reformatories, declaring that no inmate shall be placed therein longer than twenty years.

Law No. 45, April 12, 1922, amends the law of taxation on trust properties, to such a measure that a trustee shall pay income taxes, not his cestui que trust.

Law No. 47, April 12, 1922, is a stamp act which decrees that a three cent stamp is required on a memorandum or evidence of contract of deposit, loan, consignment, and hire.

Law No. 52, April 18, 1922, amends the law of censor. The amendment authorizes the government to extort facts from a person or corporation under pain of penalty.

Law No. 62, April 21, 1922, prescribes a rule for trust estates created by a testament. The greater part of the provision deals with the relation between trustee and cestui que trust. As the rest of the law appears to be identical with the laws enacted by some of the states in the Union, it cannot be regarded very important. But trustees are under a close supervision of the court and they are required to file a report once a year, a failure of which makes them liable to a fine and imprisonment.

Law No. 70, April 21, 1922, authorizes the government to enter into an insurance business. The government may from time to time become an insurer of a person against contagious diseases, where a locality in which a person is living or has to live is so perilous that no insurance company would underwrite such a risk.

Law No. 71, May 5, 1922, is a law that creates bankruptcy courts, where the judges are clad with a special power that enables them to call in debtors and creditors together for conferences and to assist them to come to an agreement. It may be a compulsory agreement if the situation warrants it.

The rest of the legislation in the year of 1922 does not seem very important. The greater part of the enactments deal with budgets, changes of administration, and specifications of official duties and powers, etc., which cannot be considered as a general interest.

J. G. K.

NOTES FROM THE PHILIPPINES

Governor General Woods Remains.—Probably the most important item of information for the legal profession, as for all others interested in the Philippines, is Governor General Wood's decision to continue in office. The General is not a lawyer (by profession he was first a physician and then a soldier), but he has earned the gratitude of all right-minded lawyers by his heroic efforts to improve the Philippine judiciary. Moreover, the legal profession shares with the rest of the community the beneficent results of the Wood administration. The Philippine peso, which a couple of years ago had suffered a depreciation of 16 per cent, has recently reached par and the general business situation, which had been much depressed, has taken a turn for the better. But while much has been accomplished in a quiet way during the year and a half of Governor General Wood's régime, his task is far from finished and that fact has undoubtedly led him finally to decline the University of Pennsylvania's tempting offer. For no one realizes better than he that the task of preparing a people for self-government is a slow and difficult one. As he himself expressed it in his report to the President before assuming his present office:

> We have overtaxed the ability of the people to digest and make efficient, practical use of what it has taken other nations generations to absorb and apply. In our critical impatience we forget the centuries of struggle through which our own race passed before it attained well balanced self-government.

Legislation.—The output of the regular legislative session was meager, a large part of the time being consumed in a three-cornered contest for the speakership, which was finally terminated by a fusion between the Nationalists and the new Collectivist party. The successful candidate, Mr. Manuel Roxas, was, by the way, one of the writer's students in the College of Law of the University of the Philippines and his subsequent success was fully foreshadowed by his brilliant class record.

A special session, therefore, became necessary to provide measures for the economic development of the archipelago, particularly with reference to rubber. There seems to be no reason why the Philippines should not be as productive of this important commodity as the Straits Settlements, provided there is proper planting and cultivation. But this, on a large scale, cannot be accomplished except with ample capital and by corporate enterprise. These, however, will not be attracted unless the Philippine land laws are so amended as to permit corporate ownership of large tracts. To effect such amendment is one of the Governor General's purposes in calling an extra session. On February 25, a bill was introduced authorizing a tewnty-five-year lease of 50,000 acres for rubber growing. But the time is not sufficient to attract investors, 50 years being considered the minimum consistent with safety.

Education.—In an address before the Pan-Pacific Association not long since the writer had occasion to contrast the educational situation in the Philippines and in China as follows:

> One of the first institutions which the United States established in the Islands was the public school on the American model. Even before civil government was inaugurated soldiers were drafted as teachers of the primary schools. The third legislative act of

the Philippine Commission was a measure appropriating funds for the Superintendent (now Director) of Education.[1] That official has always been an American, and I believe that most of the division superintendents are still. The twenty-second annual report of the director reached me only yesterday and on the very first page I find this remarkable statement: "The total annual enrollment in all of the public schools of the Islands as of December, 1921, was 1,070,255."

This represents no less than 10 per cent of the total population, and a corresponding ratio in China would mean forty millions of children in the public schools. What a change that would involve in the next generation of Chinese! For twenty-two years now these Filipino children have been receiving instruction through the medium of English, and it is little wonder that English is fast becoming the common language of the Philippines. Indeed, the avowed goals of the Bureau of Education are: (1) to render the Filipinos literate in English, and (2) to give them the rudiments of industrial training. This is not an ambitious program, but it is a practical one, and it offers the indispensable foundation for a democracy. China may watch the experiment with the greatest profit.

But the American educational system in the Philippines does not stop with the primary schools. There is, I believe, in every one of the thirty-eight provinces, at least one modern, well-equipped high school, and the system is crowned with the university at Manila under an American president, and one of its departments is the agricultural college at Los Baños, which has already admitted Chinese students and trained them in tropical agriculture for South China.

I have said that this educational system was the first concern of the American government in the Philippines. But I should not fail to add that it has also received the cordial support of the Filipinos themselves, and the legislature, which is now wholly native, has not been less liberal with its educational appropriations than was the original Philippine Commission which was entirely American.

The total net expenditure for the Philippine public schools in 1920 (the last reported year) was P19,011,077.50, or nearly $10.000,000 gold, while the outlay for the same period in China, with forty times the population, was about $6,000,000 Mexican.

Here, then, is an experiment which offers the most fruitful lessons to China. As an educational system it has already attained success; from the political standpoint it affords the one sure basis for a permanent democracy.

C. S. L.

1. Acts of the Philippine Commission No. 3.

Miscellany

The Bibliothéque De L'Institut De Droit Comparé De Lyon has issued its initial volumes, which are of peculiar interest to the Anglo-Saxon lawyer. These are the first of the studies and documents which the faculty of Comparative Law at the University of Lyon, France, have upon their program of work.

Volume I is *"L'Association du Barreau Americain, par Mlle. G. Madier, Docteur en Droit. Avec une Preface de Edouard Lambert, Professeur de Droit Comparé à L'Université de Lyon."*—This volume is an appreciative critique of the American Bar Association, its organization and work, having a preface of fifteen pages by Professor Lambert and a text of one hundred and nine pages, treating in separate chapters the organization, plan of work and the accomplishments of the American Bar Association, during its history of forty-five years and more.

The volume concludes with the words: "It is not certain that our Bar for ourselves has in the same field of labor, done all that the community could expect of it. The example of the American Bar Association is therefore one to show what valuable support the legislator may find in the co-operation of the body of jurists, uniting with the professional conscience a clear sense of the economical and social needs of the country."

The second volume is *"Les Jugements Declaratoires: Une Nouvelle Forme D'Activité Judiciaire. La Justice Preventive, par Michel Maynard, Agrégé de L'Université, Docteur en Droit."*—This volume contains a full bibliographical index, giving the English and American as well as the German books upon this subject, and has a text of one hundred and twenty-eight pages pointing out the function of the declaratory judgment, its purposes and procedure and characteristics as an action at law, as well as the origins of it. It treats the development of the action for a declaratory judgment as it has been developed in the British Empire, in the United States and in Germany. It questions the existence of such an action in the French law but urges its introduction as a principle for the working out of curative and preventive justice.

The third volume is *"Les Décisions Régulatrices de la Politique du Travail et du Commerce des Juges Anglais (Restraints of Trade).*

II

Allen vs. Flood: Le boycottage, les listes noires et les autres instruments the contrainte syndicale devant la loi civile.—Les deux courants actuels de jurisprudence.—Les origines du courant liberal, par Jean Fouilland, Docteur en Droit."—This volume has an introduction of fifteen pages and a text of three hundred pages exhaustively treating of the origin and the precedents involved in this famous English case of Allen vs. Flood and its position in the development of English jurisprudence.

The Rule and the Reason

"A gentleman, who in debate in the House of Commons on the 14th inst., in reply to an interruption by Lady Astor, M. P. addressed her as 'My dear lady', was reminded by the Deputy-Speaker that he must address the Chair, and that, as yet, a lady was not the occupant of the Chair. In the House of Lords, pursuant to Standing Order No. 25, a peer addresses his speech 'to the rest of the Lords in general.' In the House of Commons a member addresses the Speaker, and it is irregular for him to direct his speech to the House or to any party on any side of the House. The House of Commons rule, which is an invaluable safeguard against recrimination and offensive language, owes, strange to say, its origin not to a view to the achievement of the object it has so successfully attained but merely to the exigencies of the time in which the Speaker really was what the name expresses, the Prolocutor of the Commons, the interpreter of the will of the House as a whole. In those days it stood to reason that when discussion took place among the knights and burgesses about the subsidies requested by the King or the grievances to be laid before him, the chief desire of each member was to make his meaning as clear as possible to the spokesman of the House so that he might know the wants and wishes of the House."—The Law Times (Feb. 24).

Venerable Jurist Dies

"John Alden Riner, seventy-two, for thirty years a United States district judge for Wyoming and at the time of his retirement a year ago the oldest Federal judge in the United States in point of service, died recently at Cheyenne, Wyo. He was appointed when Wyoming was admitted."

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STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912,

Of American Bar Association Journal, published monthly at Chicago, Ills., for April 1, 1923.

State of Illinois } ss.
County of Cook }

Before me, a Notary Public in and for the State and county aforesaid, personally appeared Joseph R. Taylor, who, having been duly sworn according to law, deposes and says that he is the Business Manager of the American Bar Association Journal, and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher, American Bar Association, W. Thomas Kemp, Sec., Baltimore, Md.

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Managing Editor, Joseph R. Taylor, 1612 First National Bank Bldg., Chicago, Ills.

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2. That the owners are: (Give names and addresses of individual owners, or, if a corporation, give its name and the names and addresses of stockholders owning or holding 1 per cent or more of the total amount of stock.) American Bar Association (not inc.), John W. Davis, President, 15 Broad St., New York, N. Y.; F. E. Wadhams, Treasurer, 78 Chapel St., Albany, N. Y.; W. Thomas Kemp, Secretary, 901 Maryland Trust Bldg., Baltimore, Md.; W. O. Hart, Chairman General Council, Box 1660, New Orleans, La.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities, are: There are none.

4. That the two paagraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

JOSEPH R. TAYLOR.

Sworn to and subscribed before me this fifth day of April, 1923.

(Seal) Alice M. Rankin,
Notary Public.

(My commission expires March 30, 1925.)

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